Department of the Secretary of State of Canada
Secrétariat d'État du Canada

Anti-Discrimination Staffing Policies:

Implications of Human Rights Legislation for Employers and Trade Unions

by
Harish C. Jain, Ph.D.
Professor
Personnel and Industrial Relations Area
Faculty of Business
McMaster University

Canada

86-02220/

Department of the Secretary of State of Canada
Secrétariat d'État du Canada

Anti-Discrimination Staffing Policies:

Implications of Human Rights Legislation for Employers and Trade Unions

by
Harish C. Jain, Ph.D.
Professor
Personnel and Industrial Relations Area
Faculty of Business
McMaster University

Prepared for the
Human Rights Directorate of
the Department of the
Secretary of State of Canada

January 1985

ISBN 0-662-14147-4

Cat. No. Ci 51-71/1985E

TABLE OF CONTENTS

Anti-Discrimination Staffing Policies:

Implications of Human Rights Legislation for Employers and Trade Unions

		PAGE
	Table of Contents	(i)
	Executive Summary	(ii)
Part I	Employment Discrimination Against Minorities	1
Part II	Human Rights Implications of the Staffing Process	8
Part III	Canada's Major International and National Obligations in the Human Rights Area	24
Part IV	The Role of Employers and Trade Unions	61
	Appendix I	69
	Appendix II	98

Anti-Discrimination Staffing Policies:

Implications of Human Rights Legislation for Employers and Trade Unions

by Harish C. Jain, Ph. D.
McMaster University

EXECUTIVE SUMMARY

Job Barriers

1. Minority groups including women, racial and ethnic minorities, native people and the disabled face both entry-level and post-employment discrimination in the workplace.

2. A job barrier is a requirement that is unrelated to actual or potential job performance. Some of the job barriers faced by minorities include narrow channels of recruitment (e.g. word-of-mouth), restricted recruitment advertising, credentialism (i.e. higher than necessary educational requirements), job interviews characterized by personal bias, prejudice and stereotyping, restricted promotion criteria, limitations upon the posting and bidding arrangements for internal recruiting, lower paying job classifications and mobility clusters and discriminatory seniority systems.

3. Discrimination results in enormous costs to not only the discriminating organization but also to the society as a whole. To an employer, it could entail loss of productivity, increased labour cost, labour unrest, increased wastage and even sabotage. The costs to society include higher unemployment and welfare costs as well as costs of crime and delinquency and loss of potential market for the economy as a whole.

Human Rights Implications of Staffing

4. Human Rights laws in all jurisdictions in Canada regulate employee recruiting and selection practices. The pre-employment guides issued by the various Human Rights Commissions set out what recruiters can and cannot legally do or ask in recruiting interviews and (or) on application forms. Illustration of positive policies and practices by several Canadian organizations are provided in the text. For instance, a school board in Ontario recently approved a policy that anyone applying for a job will not have to state their age, sex, marital status, physical health, or the language they speak.

5. An employment test or a battery of tests should be developed based on a thorough analysis of the job, be reliable

and valid and ensure fairness (by avoiding bias) and equality of opportunity by investigating differential validity. Polygraph or lie-detector tests are illegal in Ontario. Employers should be wary of using these tests elsewhere in Canada as well due to Common law tradition, and the reliability and validity of these tests being in considerable doubt.

6. Bias in job interviews can be minimized by asking job-related questions, by standardizing the interview guide, by asking all questions on the guide of every applicant, by providing sound training to job interviewers and the like.

Canada's International and National Human Rights Obligations

7. Canada has ratified numerous international human rights instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and two international Conventions on the elimination of all forms of racial discrimination and discrimination against women, to cite just a few. In addition to these United Nations (UN) instruments, Canada has also ratified numerous Conventions of the International Labour Organization (ILO), a specialized UN agency. These include the ILO Conventions on equal remuneration and discrimination in employment and occupation. Canada also has a Charter of Rights and Freedoms, and human rights statutes in each jurisdiction.

Freedom of Association and the Protection of the Right to Organize

8. The international human rights laws have an impact on Canadian laws as well as Canadian judiciary. Although there are no international enforcement mechanisms and these laws are not binding on Canada, they have a great deal of impact on Canada's international reputation. For instance, in the case of the ILO's Convention No. 87 on Freedom of Association and Protection of the Right to Organize (by trade unions), the ILO's Committee on Freedom of Association has recently found several Provincial laws to be violative of this Convention. In November 1984, the ILO voted unanimously to send a fact-finding mission to Canada to investigate the alleged unfair labour practices by the governments of Alberta, British Columbia, Ontario and Newfoundland. The federal government is currently in the process of considering the ILO request.

Equal Pay Laws and Job Evaluation

9. A review of compliance with equal pay laws by employers and unions indicated that a job evaluation plan carried out in collaboration with the union may yet be unjust and does not absolve management from its responsibility to set equitable wage laws. Some critics believe that job evaluation is intrinsically discriminatory against women; it reflects market value and fails to measure any intrinsic value of the job. However, the administrative agencies and courts have accepted job evaluation as a

measure of equal value. A properly constructed and implemented job evaluation system can act as a preventive to complaints and litigation. It may also serve as a bona-fide defense. Any job classification that results in sex-segregated positions, as in the Quebec collective agreements provisions, should be investigated to determine if the classification is indeed based on bona-fide job differences.

Equal Employment Decisions

10. A review of the legal decisions on employment discrimination reveals that boards of inquiry, tribunals and(or) courts as well as Human Rights Commissions have dealt with discrimination in job advertisement, job referral, English language proficiency, application forms, physical requirements, misconceptions and stereotypes, job interviews and bona-fide occupational requirements in the pre-employment area. In the post-employment area, these agencies have rendered decisions in the area of seniority, promotion, dismissal, racial name-calling, and sexual harassment.

11. In most cases that went before a board of inquiry, in which discrimination was found, more than one remedy was ordered. The most frequent one was compensation for lost wages. Other remedies included reinstatement of the complainant, offer of employment, or opportunity for employment or interview etc. at the next available job opening, compensation for pain and humiliation suffered by the complainant, compensation for general damages, compensation for expenses incurred and the like.

Implications for Employers and Trade Unions

What can Employers do?

12. Staffing systems can be considerably improved by employers by standardization, by obtaining reliable information, and by the validation process. For instance ability tests and work sample tests, relative to personality and interest tests, have the most favourable validity evidence. References and recommendations, as well as interviews generally have been found to be less valid as predictors of job success. In addition, employers can try to overcome communication difficulties in the workplace by avoiding mis-communication and stereotyping.

What can Unions do?

13. Women and minorities are severely under-represented in trade union leadership roles in Canada and in the U.S.A. It is in the unions self-interest to increase minorities' share of union officer positions. A core of minority and female officers could enhance the appeal of unions to unorganized minorities and women. In addition, unions can ensure that every collective agreement they negotiate contains a non-discrimination clause. These and other policies listed in the study could go a long way towards creating equality of opportunities for minorities and women.

Part I

Employment Discrimination Against Minorities

Pay and employment discrimination against minority groups has become a matter of social and political concern in the post-war decades. Minority groups include, but are not restricted to, women, racial and ethnic minorities, native people and the disabled. The concern for equality of opportunity has also been dramatized in recent decades because of the variety and number of immigrants - especially the Third World immigrants - who arrived in the late 1960s and after. As a result, our society today is multi-cultural, multi-lingual, and multi-religious.

The existence of human rights statutes across Canada is an attempt to ensure equality of opportunity to minorities and women. Despite this attempt, minority groups continue to face inequality in both pay and employment, (Jain, 1983a).

- Women account for more than 40% of the labour force but they fill only 25% of managerial positions, mostly at the first-line supervisory and middle-management levels.

  The average earned income of women who work a full year is about 59% of the average male income. In fact; male average earnings exceed female average earnings in all occupational groups, even those dominated by women.

- Third-world immigrants, relative to other immigrants, experience higher rates of unemployment, earn less money, and are more frequently unable to find work in their chosen fields.

- Projections indicate that the working-age population of native peoples will increase by 200,000 in the 1980s, much faster than during any previous decade. Yet their participation rate in the labour force is expected to be substantially lower than the national average. Average wages and incomes for native people are well below national levels. Their unemployment rate is also much higher.

- The disabled face persistent unemployment (as nigh as 85%) and under-unemployment. Those with jobs have

low income jobs. Their number in career jobs is chronically small.

One of the most important reasons for the continued inequality faced by women and minorities in the workplace is both pre- and post-employment discrimination. Both of these types of discrimination are outlined below.

Entry-Level Job Barriers

A requirement that is unrelated to actual or potential job success or performance on the job is called a job barrier. Job barriers include recruitment, application forms, educational requirements, employment tests, and interviews.

Recruitment channels and procedures can contribute to discrimination against minorities and women. Many organizations tend to follow established channels of recruitment. If employee referral methods, such as word-of-mouth, have been used in the past, only friends and relatives can hope to obtain employment to the exclusion of women, natives, third world immigrants or disabled workers since the firm may have traditionally employed only a few of these minorities or employed them in low-level jobs.

For example, a report on the status of women at the CBC revealed that a manager with a vacancy often searched for people who fit the current mold; if a man held the job, they looked for a man, and vice-versa, (Women in the CBC, 1975).

In addition to the tendency to utilize only stable channels of recruitment, in some cases, as in the Public Service of Canada, there is a statutory provision for managers to fully search inside their organizations before being permitted to go outside and hire from the public. This has an adverse effect on minorities.

Recruitment Advertising: Traditionally major employers have placed their recruitment advertising in the major English-speaking newspapers, or have recruited via the 'old boys' network of word-of-mouth. However, this traditional source of advertising may not be the best way to communicate staffing needs to minorities. A recent attempt (1983) by the CBC to hire a few visible minorities met with overwhelming positive response from Canada's racial and ethnic minorities. This occurred because the CBC placed advertising in ethnic newspapers, magazines or journals.

Employee organizations and trade unions: These organizations can sometimes impose restrictive entry requirements such as control of hiring through union hiring halls, high levels of education and training, tests of ability, entry fees, and giving preference to members' sons and other relatives. In the case of professional associations, licensing bodies sanctioned by

governments may impose qualifications for entry into an occupation which are higher than performance on the job requires.

Credentialism or educational qualifications requirements that are higher than necessary for effective job performance, tend to have a disproportionate impact on minorities. For example, a requirement of a high school diploma screens out a majority of Natives. As average educational levels have gone up, credentialism has also increased with an increased impact on minorities, (Jain, 1974).

Tests can also act as barriers to minority employment. Many tests which have been used to make selection decisions have been found to be poor predictors of job success. Some tests which require physical ability or dexterity to complete them tend to screen out physically handicapped applicants who are otherwise able to do the job. Similarly, there might be sexual and cultural barriers in some standardized tests which have a differential impact on women, racial and ethnic minorities and Native (Jain, 1983a).

Job Interviews are used by almost all organizations as an important pre-screening device. The interview process can screen out a disproportionate number of minorities because of personal bias, prejudice or stereotyping on the part of the interviewer. For instance, females are generally given lower evaluations than males with identical qualifications, (Arvey, 1979).

Similarly in job interviews, studies have found that job applicants are more likely to be hired if they look straight ahead rather than down. People who look the interviewer straight in the eye are rated as being more alert, assertive, dependable, confident, responsible and having more initiative, (Amalfitano and Kalt, 1977). Moreover, applicants who demonstrate greater amounts of eye contact, head moving, smiling and other non-verbal behaviours are rated higher than applicants who do not, (Young and Bier, 1977; Jain, 1983b).

The effect of all the above-mentioned restrictions will be to limit opportunities for minority workers, since they may, on average, fare less well on these requirements than the rest of the population. This is especially true of the native people who are denied entry into courses in skilled trades since these can only be taken upon completion of grades 11 or 12. Thus, a majority of Natives receive no training in the trades such as carpentry and plumbing since their educational attainment level, in most cases, is too low. Furthermore, existing employees in such occupations will resist any attempts to remove such indirect discrimination which reduces competition for their jobs and hence enables them to maintain artificially high wages.

Entry level discrimination against the disabled include the presence of barriers, in addition to unfavourable attitudes.

There is a general lack of ramps and special walkways at private and public institutions to enable a disabled person to navigate and to perform effectively.

Levitan and Taggart (1977) have summarized the barriers faced by the disabled this way: "Employer surveys evidence a general reluctance to hire the disabled when non-disabled workers are available. Many employers believe that there are higher costs, such as increased worker's compensation expenses or inflated medical and life insurance premiums. Although most believe that the disabled will be more reliable, they (employers) fear involuntary absenteeism and turnover. Another consideration is the lack of flexibility in job assignments and the difficulty of promoting." To these can be added absence of company policies governing recruitment of the disabled and the lack of flexible work schedules (Sampson, July 1981). Since the disabled as a group are likely to have lower educational and training attainments than the non-disabled, several of the employment hurdles (i.e. screening, credentialism, etc.) discussed above, have a disproportionate effect on their employment even though they might be able to perform some of the jobs.

Post-employment Practices: Discrimination can also occur after an individual has been hired. It can take the form of poor performance evaluation, lack of promotions, transfers, and/or salary increase. Women, visible minorities and the disabled could be assigned to lower level jobs at lower salaries relative to non-minorities despite similar qualifications, (Malkiel and Malkiel, 1973; Chiplin and Sloane, 1976).

> A female employee of a Provincial Government department complained that she had been subjected to an unfair performance evaluation. She alleged that as part of her probation period, she was to be shown how to do specific tasks as part of her training. The foreman, who did not like women working in the area for which he was responsible, failed to show her the tasks necessary for her to do the job. The complainant had, on several occasions, requested that he do so.
>
> The foreman later evaluated her as incompetent because she could not do these same tasks and gave notice for her dismissal.
>
> The Human Rights Commission upon investigation of the case, brought about a settlement whereby the woman was allowed to complete her probationary period at which time she would be given a fair assessment of her work. In due time, this employee successfully passed her probationary period and went on to become a permanent full-time employee of the department (Jain, forthcoming).

Minority group workers may be denied promotion by restrictive promotion criteria, by limitations upon the posting and bidding arrangements for internal recruitment, by restricting

both minorities and women to the lower paying job classifications and mobility clusters, and by discriminatory seniority systems.

Seniority systems in unionized companies, for example, may discriminate against women. If males have more seniority than females, they will naturally have higher earnings, larger fringe benefits, easier access to overtime, preferred jobs and promotable jobs, and a lower possibility of lay-off through the operation of "last-in-first-out" systems. Seniority systems, therefore, have the serious disadvantage of perpetuating existing unfavourable minority employment patterns. If women are the last to be hired during the recovery phase of the business cycle, they will be the first to be laid off in the recession phase, (Jain and Sloane, 1983).

Job evaluation systems that emphasize experience (and seniority) and educational attainment, even when done in collaboration with unions, may result in pay discrimination for women and minorities as illustrated by the following case, (Jain, forthcoming).

> Beatrice Hermatiuk and 15 other female Housekeeping Aides at the Pasqua Hospital, Members of CUPE XZY file a complaint to the Saskatchewan Human Rights Commission that they were being paid 20 cents an hour less than "caretakers", all of whom were male. The hospital administrators contended that wages were set through a collectively bargained contract which was based on a 1974 Cooperative Wage Study (job evaluation) done by the union and the management.
>
> The Human Rights Commission, after a formal hearing issued a decision that both Caretakers and Aides are responsible for cleaning the hospital.
>
> Though the Caretakers spend some of their time exerting greater physical strength, the Aides' regular duties involve "an equal or perhaps greater amount of effort, although of a different kind than exercised by the Caretakers".
>
> Following the Commission decision, the union representative said the cooperative wage study was long out-dated and not considered valid by the union. He stated that, "the cooperative wage study was put together to shaft workers from one end of the province to the other".
>
> (Leader Post, December 16, 1982)

Costs of Discrimination in the Workplace

Discrimination results in enormous costs to not only the discriminating organization but also to the society as a whole. Underutilization of staff lowers an organization's potential productivity. By denying employment and upward mobility to women and minorities, a firm may be denying itself the

services of some very competent personnel. By insisting on drawing talent from the traditional sources only, organizations may inadvertently increase their labour cost. Holding minorities in low status jobs results in much frustration and alienation on their part which could surface in the form of labour unrest, increased wastage of material and even sabotage. Discrimination just does not make good business sense. Under the changed and changing social values the traditional "white supremacy" attitudes can only result in decreased business for the firm resulting from bad publicity.

The costs of discrimination to society are in terms of higher unemployment and welfare costs as well as costs of crime and delinquency, costs of public housing and redevelopment of slums. When the needs of a segment of the population are not attended to, they become economically disadvantaged and to that extent there is a loss of potential market for the economy as a whole. Canada has also relied on other countries for a substantial portion of its labour supply and it does not make sense to seek to import from outside when there is a large pool of minorities, women and the disabled within Canada that could be developed. Thus continued discrimination at the workplace would be costly to the nation as a whole as well as the individual organization.

In Part II, the human rights implications of the staffing process are discussed.

References

Amalfitano, J.G. and N.C. Kalt, "Effects of eye contact on the evaluation of job applicants," Journal of Employment Counselling, 14 (1977).

Arvey, Richard D. Fairness in Selecting Employees, Reading: Mass., Addison-Wesley, 1979.

Chiplin, B. and P. Sloane, "Personal characteristics and sex differentials in professional employment," Economic Journal, December 1976.

Jain, Harish C., "Staffing: Recruitment and Selection" in Human Resource Management in Canada, Scarborough, Ontario: Prentice-Hall Canada Inc. 1983a.

_____, "Is education related to job performance?" in Contemporary Issues in Canadian Personnel Administration, Scarborough, Ontario: Prentice-Hall Canada, Inc. 1974.

_____, "Communication difficulties in the workplace," Affirmation, September, 1983b.

_____, "Human Rights Issues and Staffing," in K. Srinivas, Human Resource Management (forthcoming).

_____, and Peter J. Sloane, "The impact of recession on equal opportunities for minorities and women in the United States, Canada and Britain," The Columbia Journal of World Business, Summer 1983.

Levitan, Sar and Robert Taggart, Jobs for the disabled, Baltimore: John Hopkins University Press, 1977.

Malkiel, B.G. and J.A. Malkiel, "Male and female differentials in professional employment," American Economic Review, September 1973.

Sampson, Frank, Issues relating to the labour force position of the disabled in Canada, Ottawa: Employment and Immigration Commission, July 1981.

Young, D.M. and E.G. Beier, "The role of applicant non-verbal communication in the employment interview," Journal of Employment Counselling, 14 (1977).

Part II

Human Rights Implications of the Staffing Process

Both access to jobs and post-employment job barriers faced by minorities were outlined in Part I. In this part, the legal implications of the recruitment and selection policies of organizations are discussed.

Personnel Recruitment: Human rights laws in all jurisdictions regulate recruiting practices. All recruiting methods are affected by these statutes. The pre-employment guides issued by the federal, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan Human Rights Commissions are provided in the Appendix I. These guides set out what recruiters can and cannot legally do or ask in recruiting interviews and/or on application forms. For instance, under the prohibited ground of marital status, the Saskatchewan guide prohibits employers from asking the marital status of the applicant, any inquiry as to applicant's spouse, number of children or other dependents, child care arrangements or whether the applicant is pregnant, breast-feeding a child, on birth control or has future childbearing plans. Similarly in the Ontario Code, where physical and mental handicap is a prohibited ground, inquiries about health, handicaps, physical defects, illnesses, mental disorder, impairment or retardation, medical history, learning disability, injuries or workmen's compensation claims, medication, membership in Alcoholics Anonymous are all prohibited as are pre-interview medical examinations. The only exceptions are (1) inquiries or medical examination directly related to an applicant's ability to perform the essential duties of the job and (2) "genuine and reasonable inquiries" about pension and benefit plans made after hiring. Some of the other prohibited grounds include birthplace, religious affiliation, citizenship, membership in clubs, societies and lodges, and in some jurisdictions past criminal offenses.

Exhibit 1

NEWSPAPER ADVERTISING POLICY OF A LARGE CANADIAN BANK

Advertising through newspapers can be expensive, but at times it is necessary. However, the following guidelines should be followed if you decide to use this medium:

1. If you have the service of Central Recruiting available, do not write your own advertising copy;
2. If there are other (X bank) Branches in your community, contact them or your Regional/District Office before placing your ad to ensure proper co-ordination of advertising;
3. Ensure that each advertisement complies in all ways with federal regulations. If you have any doubt about a matter for inclusion in an ad (a particular phrase,

for example)
please check with Regional Office before giving the copy to the newspaper;

4. Since some of the information traditionally requested by an employer in a job advertisement is not always relevant to the job qualifications or performance, and can be used to deny employment opportunities to certain groups of people, extra care must be taken to ensure your ad is free of all discriminatory aspects. Do not state any qualification that could be considered discriminatory on the following grounds:

- race
- national or ethnic origin
- colour
- religion
- age
- sex
- marital status
- physical handicap
- conviction for an offence for which a pardon was granted
- trade union affiliation.

Therefore, it may be appropriate to include a sentence such as: "This position is open to both qualified males and females.", but avoid such as: "Canadian banking experience preferred."

Exhibit 1 represents the newspaper advertising recruitment policy of a large Canadian bank. As noted in point 4 of this policy, advertising must be free of all discriminatory aspects in order to comply with the human rights legislation. In other words, ads cannot indicate preference for persons of a particular sex, religion or ethnic group unless such a worker characteristic is a bona fide occupational qualification such as in the case of advertising for a school teacher or a wet nurse. In the former case a preference could be expressed for a Catholic teacher and in the latter case for a female. This is because only a person of a particular religion or sex can perform the job. Although this interpretation of the bona fide occupational qualifications, (b.f.o.q.) contained in most human rights statutes in Canada, is correct at this time, whether a discriminatory or prohibited ground can be a b.f.o.q. will depend upon a particular statute and the facts of each particular case. It is safe to say, however, that b.f.o.q.s are narrowly defined in the available legal decisions in Canada, and as a rule very few jobs have them.

Employment Agencies: The term "employment agency" includes a broad category of recruitment organizations and activities. Whatever its clientele, ownership, or fee structure, the basic advantage of the employment agency is that it provides pre-screened - and in some cases well-screened - lists of job applicants, thereby saving employer's time. To match the employer's

job specifications with the abilities and interests of potential job applicants, employment agencies perform a variety of services, including advertising, interviewing, testing for skills, aptitudes and interests, reviewing credentials and work experience, and employment counselling (Rubenfeld and Crino 1981). Some agencies have voluminous files, including a number of people who would not respond to advertisements; other agencies approach prospects directly.

An employment agency's services may be desirable in the following situations:

1. the employer wants to generate a pool of qualified candidates quickly;

2. the employer needs only a few people or needs new employees at irregular intervals, and would therefore prefer to avoid an elaborate recruiting capacity;

3. where there is a shortage of high talent people, such as professional, skilled and managerial employees, an employer's recruitment effort is aimed at reaching currently employed individuals (Rubenfeld and Crino 1981).

A major attraction of using an employment agency is that the fee is contingent upon results: no results, no charge.

Human rights implications of using employment agencies should be carefully considered by employers. While the authority to screen potential applicants can be subcontracted to the agencies, the responsibility for ensuring a successful and fair selection process rests with the employer. The employer can do this by providing the agency with an accurate and complete job description, by knowing - or even specifying - which devices the agency uses or should use to screen applicants; by becoming familiar with the agency's decision rules and assessing their impact on the selection process; and where possible, by reviewing data on rejected candidates in case of a legal challenge concerning the fairness of the selection process, (Rubenfeld and Crino 1981).

There are allegations that some employment agencies across Canada discriminate against members of minority groups by accepting instructions from their employer clients not to refer members of such groups for job interviews. Several telephone surveys conducted by the Canadian Civil Liberties Association in 1975, 1976 and 1980 have confirmed this suggestion. For instance, a 1980 survey of some 25 such agencies in Halifax, Toronto, Winnipeg and Vancouver revealed racially discriminatory practices by a majority of these agencies. Responding to such concerns, the Ontario Ministry of Labour issued a discussion paper in December 1982 entitled "Employment Agencies and Discrimination". This paper proposes five remedial measures which include the

education of employment agency staff; self-regulation by the agencies themselves; expanded record keeping; and testing and licensing of employment counsellors. Whether or not one or more of these measures become public policy in Ontario, it is important that employers follow the suggestions outlined above to ensure fair selection.

Personnel Selection: Most organizations use several predictors such as application forms, psychological tests and (some use) polygraphs, interviews, experience and educational requirements and physical examination to recruit and select potential employees. The human rights implications of each of these predictors is outlined below.

Application Forms: Many items on application forms are either illegal under human rights statutes across Canada or can be of such a nature as to give rise to questions of fairness. One way to abide by the human rights legislation is to clearly state on the application form that information on prohibited grounds is not to be provided by the applicant. An attempt has recently been made by the Lakehead District Roman Catholic Separate School Board. The Board approved that anyone applying for a job will not have to state their age, sex, marital status, physical health, or the language they speak, (Thunder Bay Chronicle Journal, Jan. 11, 1983). Another way to ensure that an employer is abiding by the human rights legislation is to have the application form approved by the relevant Human Rights Commission or to adopt the sample Application for Employment provided by the Ontario Human Rights Commission, (See Appendix II). Not complying with the legislation can lead to considerable embarrassment and even penalties. A recent example is the form used by the Ontario Ministry of Community and Social Services. Women applying for jobs with the Ministry found that they had to include information on marital status, birthdate, husband's name and occupation, the language she usually speaks and medical information; this led to considerable political embarrassment for the Ministry and the provincial government; (Globe & Mail, March 15, 1983, p. 5).

Application forms can be used effectively to predict success in a variety of jobs, if discriminatory items prohibited by the human rights statutes are taken into consideration.

Tests. Approximately 20 to 25 percent of Canadian employers uses tests to obtain information on the abilities, aptitudes, interests and personalities of job candidates (Maklin, 1982; Tefft, Dec. 12, 1981; Dewey, Feb. 7, 1981, B-1). It is believed that these characteristics of job applicants will help to predict the probable success of applicants on the job.

Discriminatory Factors in Tests

Test Anxiety: Minority groups may score poorly on tests partly because of anxiety resulting from their lack of

familiarity with the testing situation. Poor testing conditions in terms of space, lighting and freedom from noise can contribute to anxiety and should be avoided. Opportunities for re-testing should be provided. The examiner should be prepared to give full attention to the testing session and not regard it as frivolous.

Bias in tests: Tests do not discriminate against any groups, people do. Bias is not a property of the test itself, but a function of the way the test is used. For example, in an educational setting, an intelligence test might accurately (validly) identify mentally retarded children. However, even if a test is accurate, validity theory does not say whether the use of the test will produce a social good or social evil. Thus, the actions taken on the basis of valid test scores may be either positive or negative ones, even for the retarded child. A valid test may be used to produce results that are educationally or socially negative, just as an invalid test may be used in a way that produces positive results, (Cole, Oct. 1981, 1067-1077).

Moreover, employment tests are or should be only a part of a complex selection decision-making process. The focus should be not on the testing portion of the process alone, but on analyzing the whole employment decision-making process with the aim of making it as valid and fair as is practically possible. That is, the whole selection system needs to be justified, not just the test.

The main finding from the test bias research done in the United States is that there is no large-scale, consistent bias against minority groups in the major, widely used tests. This conclusion is based on a review of research undertaken to detect cultural, content, predictive, and selection bias in mental tests. It includes analysis of subtle differences in the content of test items to which individuals react differently. However, this research concerns the technical issue of validity and not whether a test should be used, even if valid. The latter is a social policy question which should be addressed by management, (Cole, 1981). For instance, in responding to a charge of cultural bias in tests, inspector Christine Silverberg, of the Peel Regional Police Force in Brampton, Ontario, recently suggested that: (1) the chief of the police is aware of the potential cultural bias in tests against minority recruits, (2) the tests the Police Force is using have been the subject of extensive validation study, the third of its kind over the past 10 years, and (3) the tests in use are an aid only in screening out those whose tendency is toward authoritarianism and prejudice, ("Peel Police on the lookout for ethnic minority recruits", Globe & Mail, Aug. 10, 1983, p. 7).

Differential Validity (D.V.): The need to test for D.V. exists only when a predictor (i.e. a test or tests) has an adverse impact on a minority group. For instance, the use of a measure of aggressiveness with females might be a reason for

investigating D.V. between males and females, (Miner & Miner, 1979).

The current concern with differential validity is with differences in validity for different groups of job applicants for selection or promotion — (as between racially and ethnically different groups, or sexually different groups). In general, as noted above, if a test is valid for one group it is likely to be valid for the other group under consideration. However, the same validity coefficients obtained for males and females do not necessarily mean the same distributions of scores, the same means, or the same variance measures.

A test or a battery of tests need to be developed based on a thorough analysis of the job, be reliable and valid, be economically feasible and ensure fairness and equality of opportunity to all-majority or minority-job applicants by investigating differential validity. They should not be the only tool on which hiring decisions should be based, but should be used in conjunction with other selection instruments such as interviews, application forms, and reference checks.

The Polygraph. The Polygraph is the most common lie detector used by employers to screen or even fire employees. Hooked up to the subject, one channel records blood pressure, a second measures changes in skin conductivity due to the activity of sweat glands, while two others read breathing motions. In other words, this mechanical instrument records changes in breathing, blood pressure, pulse and skin response. With a polygraph attached, the subject is asked a series of questions, some of which are neutral, others stressful.

As many as 25 percent of major firms in the United States are using the polygraph. A Royal Commission report and a survey by students at McMaster University reveals that it is also popular with some employers in Canada. It is being used for three purposes in employment; pre-employment screening, periodic screening of current employees, and investigation of a specific theft. One of the reasons for its growing use is that a polygraph test costs only $25 per person compared to $100 for a reference check.

The polygraph records physiological changes in response to stress, not lying per se. It is based on the premise that certain physiological changes take place when a person lies. However, stress may be caused by lying, or fear that innocence will not be proved or by anger at being suspected. Moreover, lying does not necessarily produce fear or anxiety in everyone.

A Royal Commission, inquiring into the Metropolitan Toronto Police practices, headed by Justice Morand, noted some of the major deficiencies of the polygraph. Justice Morand, observed that the polygraph machine is crude, and its operators unskilled in its use as a scientific instrument. He "was amazed

at the naive and dogmatic pronouncements by polygraphers concerning interpretations of behaviour, many of which were founded on the assumption that a reluctant subject or an opponent of the polygraph is probably a liar." He added that "without legislative controls the field is vulnerable to incompetent and even unethical operators." Since that time, the Ontario Provincial Government has outlawed the use of lie detectors by employers. Ontario is the first jurisdiction in Canada to do so. The Ontario Labour Minister suggested that lie detectors are "scientifically invalid and inaccurate, they constitute an invasion of privacy and engender a sense of fear in the workplace." Prof. McWhinney, a Constitutional law expert at Simon Fraser University, believes that a company firing an employee solely on the basis of a polygraph test could leave itself open to a lawsuit since common law requires that people have a right to a fair trial. This indicates that even if there is no specific law which bans the use of such tests, employers may still be liable, "Lie detector tests in workplace could put companies in court," (Spectator Feb. 1, 1983, p. A4). More specifically, the Supreme Court of Canada has ruled that it would not convict anyone solely on the basis of a lie detector test. In a recent arbitration case, a postal employee fired for refusing a lie detector test was reinstated with compensation for nine months' lost wages, by the arbitrator, Kevin Burkett, (Wilfred List, "Fired for lie detector refusal, postal worker wins job back, "Globe & Mail, June 16, 1983, p. 21). Burkett noted that the polygraph is not reliable test of credibility.

Both the reliability and the validity of polygraphs is in serious doubt in the employment context. This is because of potential bias, the effects of examiner experience and training, the effectiveness of various counter measures, the potential for examinee training to 'beat' the polygraph etc. (Sackett and Decker, 1979, 504). In the U.S.A., several states and the Department of Defence have established formal laws or standards prescribing licensing and training requirements for polygraph operators. Several other states have passed legislation that in one way or another restricts the use of the polygraph in employment setting (Cascio and Award, 1981).

The Job Interview: The interview is the most widely used of all selection techniques. Several reviews of the literature since 1949, beginning with Wagner, have revealed, however, that the interview has relatively low validity and reliability and is succeptable to bias and distortion.

Bias in the Employment Interview and Human Rights: Arvey's (1979) review of 17 studies showed that females are generally given lower evaluations than males when these candidates had similar or identical qualifications. In addition, evidence supported the notion that females are given lower ratings for jobs typically "masculine" in nature, and, conversely, males are given lower ratings for typically female jobs. In addition, Arvey's review also indicated that (1) attractive candidates are

typically preferred regardless of their gender; (2) handicapped applicants receive lower evaluations in terms of hiring, and higher evaluations on motivational variables. Arvey and Campion suggest that interviewers might attribute higher motivation, effort level, etc. to handicapped individuals filing applications for jobs because of the interviewer's attribution of greater efforts to overcome disabilities on the part of these applicants. (Arvey & Campion 1982).

Bias in interviewing, as shown in these studies can result in violation of the human rights legislation. Most human rights statutes across Canada prohibit discrimination with respect to (a) the use or circulation of application forms, (b) the publishing or displaying of advertisements, or (c) written or oral inquiry of an applicant, on any of the prohibited grounds specified in each of the statutes.

Exhibit 2

One large Canadian employer has prepared interviewing guidelines for its managers in the human rights area. These are as follows:

Points to Remember

Enquiries in an interview are the same as those on an application form. If they are forbidden on the one, they are forbidden on the other. Questions asked of women should also be asked of men. "Are you pregnant?", "Does your husband's job require that he move from one part of the country to another?" "Does your husband object to your travelling on business trips?", "Have you any plans for becoming a full-time homemaker?" etc. Few people would ask these questions of men. They must not be asked of women.

All interview questions should be job-related. People should obviously be encouraged to talk about themselves but care should be taken to avoid questions about institutions or organizations that are religious or national by nature. "Why did you go to Queen's University?" is O.K. "Why did you attend the XYZ Religious Seminary?" is not O.K. Sexual stereotyping has been a major problem in the past and a cause of much unfair treatment to both sexes. No one can be refused employment on the grounds that "it is not woman's/man's work." Women can lift heavy weights, men can type letters. The choice of occupation is that of the individual, not of the hiring manager.

Justifying a decision not to hire a man for an all-female area (or vice-versa) on the grounds that the person would feel out of place, is discrimination. The manager has the right to point out the situation and ask applicants if it would bother them, but the choice is the applicant's.

Exhibit 3

Another Canadian organization provides the following examples to its managers of the questions that should not be asked in an interview:

- "Were you born in Jamaica?"
- "Do I detect a Scottish accent?"
- "Haven't I seen you at X Church on Sundays?"
- "Are any of your immediate family trade union members?"
- "How do you feel about female bosses?"

Under the heading of "Discriminatory Questions", the safest rule to follow is: "If you have a doubt, don't ask."

Both the organizations above have provided sound advice to their managers. Violation of human rights legislation can result in bad publicity and penalties for an organization. In a recent case (1983), a board of inquiry appointed by the Ontario Human Rights Commission found that the St. Joseph's Health Centre in Toronto had discriminated against an East Indian by asking him questions about his race and whether it would affect his working relationship with patients and other employees. The complainant had alleged that he was never asked in the job interview about his education, experience or interests; he had applied for the job of head of the hospital's new detoxification centre. The Board ordered the hospital (1) to pay the complainant who had since found another job, $3,350 compensation for lost pay and $750 in damages, for pain and suffering, and (2) to investigate its hiring procedures in consultation with the Human Rights Commission, (Tom Spears, "Racial quiz for job unfair, he gets $4,100" Toronto Star, February 25, 1983, p. A19).

Despite its shortcomings, the use of the interview persists. This may be because interview performs several functions:

1) It yields valid judgments on several observable interpersonal dimensions of behaviour such as sociability, verbal fluency, etc. As Arvey & Campion (1982) suggest, the interview is viewed as a "work sample" of these behaviours and is likely to allow more accurate assessment of these variables than of less observable dimensions. Thus, the interview is valid in the accurate assessment of these specific observable behavioural dimensions but not necessarily of the job behaviour.

2) The interview may be used to expose job candidates to accurate information about the job. This will help create realistic job expectations for job candidates.

3) It can be used when the number of applicants is too small to warrant more elaborate procedures.

4) It can be used for accomplishing objectives unrelated to the selection decision. Examples include selling the candidate on the job and for public relations purposes.

Exhibit 4

A large financial institution provides interviewing guidelines to its interviewers. The process described below in these guidelines includes some of the benefits outlined above.

(a) Employment interviews are to be carefully planned to permit sufficient time for relaxed discussion in a private area free from interruption.

(b) An applicant for employment is to be afforded every courtesy. The treatment given will influence their impression of the institution both as a prospective employee and a customer.

(c) The interviewer is to ensure that all sections of the applications are correctly completed.

(d) The reasons for any break in Employment History are to be ascertained and explained under Interviewer's Comments.

(e) Discussion should be confined to applicant's qualifications for employment. Avoid any comments or questions that might be interpreted as limiting employment opportunity because of age, sex, marital status, race, religion, or country of origin.

(f) The attention of the applicant is to be drawn to the Notice to Applicant and Authorization on the Application for Employment. This would be an opportune time to discuss the probationary period and Employee Benefits.

(g) If a decision concerning employment cannot be reached following the interview, the applicant is to be informed of a specific date when an answer will be advised.

(h) When an applicant is employed elsewhere he/she is to be cautioned not to disturb their relationship with their present employer until employment with our institution is confirmed.

(i) A photograph or evidence of age is not to be requested or accepted until employment with our institution has been confirmed.

(j) Positive identification must be established and recorded on the Application for Employment Supplement before these forms are forwarded to the Division Office.

(k) When assessing an applicant the interviewer should consider the public relations aspects of our institution and the Interviewer's Comment should include assessment of grooming, personality and ability to communicate effectively.

(l) Before requesting verbal or written references, refer to instructions regarding Reference Letter Request in this section and be guided accordingly.

(m) Ensure that the Documentation section is completed correctly and if the Remarks section is insufficient attach a memorandum indicating placement and training of the applicant.

(n) Employment is not to be confirmed until a medical examination, if required, has been successfully completed.

How can the Interview Be Made More Reliable and Valid?

1) Several studies (Landy, 1976; Anstey, 1977; and Rothstein & Jackson, 1980) have suggested that the use of board or panel interviews appears promising as a means of improving the validity and reliability of the interview, (Arvey & Campion, 1982).

2) The accuracy of the interview can be improved by the use of directly related job analysis and other information for interview questions (Schmitt, 1976; Arvey & Campion, 1982).

3) Reliability and validity can be improved and bias and stereotyping reduced, by standardizing the information sought during the interview in the form of a standardized interview guide, developed specially for the job in question. All questions on the guide should be asked of every applicant. Questions should be devised to seek information pertinent to behaviours that are important for effective job performance. Using the guide will ensure that all applicants have the opportunity to provide comparable information and that comparative judgements by interviewers or assessors will be made on a fair and impartial basis, (Hakel, 1982).

4) Conducting multiple independant interviews, by designing multiple interview guides, where possible, can increase reliability and promote greater perception of fairness, (Hakel, 1982).

5) Interview guides and multiple independent interviews must be accompanied by sound training in their use, (Hakel, 1982).

Employment Interview - A Checklist of the Process

1. Decide what the purpose of the interview is to be i.e. whether it is initial screening device, or whether it is primarily educational.

2. Know the requirements of the job to be filled by reviewing the job description and the job specifications in order to focus on relevant information.

3. Construct an interview guide to be used for all interviews with candidates for a particular job. It will improve reliability since each candidate will have a chance to offer responses to the same questions. Recording information and then returning to it later to make ratings may help to remove some of the order effects, contrast effects (i.e. the applicant being preceded by either highly qualified or poorly qualified candidates), and undue overweighting of negative information (Schmitt, 1976).

3a) Specify information to be gathered in the interview which may be related to job success. The interview is an effective tool for assessing interpersonal skills and motivation when these elements are also required for successful job performance. For instance, questions on factors such as dependability, responsibility, team work, interest in the job, adaptability to the job etc. can lead to a performance - based interview.

3b) Write specific questions for each of the areas of job related information to be covered in the interview.

4. Allow the applicant time to talk.

5. Recognize the public relations implications of the interview (i.e. applicant as a consumer, citizen etc.).

6. Be aware of the need to avoid bias in interviewing persons of different sex, race, beliefs etc.

7. Evaluate the candidate immediately after you have gathered sufficient information in each area of the interview and record your evaluation.

8. Compare the evaluation of candidates made during the interview with ratings of their performance after they have been hired.

Experience and educational requirements. Experience and educational requirements are widely used in selection. With very few exceptions, application forms require the applicant to supply at least some details on education and work history. Yet, despite their widespread use, there have been few attempts to

determine the validity of experience and educational variables (Tenopyr 1981). These requirements may be established on the basis of a job analysis, or simply to serve as an initial screening device to reduce a large number of job applicants. Research indicates, however, that these requirements have low validity (Jain 1974; Berg 1970). Furthermore, they may be discriminatory, since they tend to exclude members of minority groups who could successfully perform the job but have been denied job opportunities, and equal access to education.

Physical Examination. It serves several purposes. The most important one being that it helps to ensure that the organization hires only those applicants who are physically able to perform the job, such as the job of a firefighter or a construction labourer. A physical examination, therefore, can help the organization in allocating employees to jobs involving light or heavy work. This process will help prevent injuries and accidents on the job. From an employer's perspective, the results of a physical examination can protect the organization against future employee claims for physical and/or mental conditions that existed prior to hiring the employee.

Because of the increasing costs of physical examinations by a physician, a growing number of companies are using a health questionnaire exclusively or using both the health questionnaire and a short physical examination for some jobs. A medical questionnaire can be as reliable as a physical examination, and perhaps, less costly.

There is very little evidence available on the validity of either physical examinations or medical questionnaires. The problem is aggravated when some organizations include items of dubious validity in the health questionnaire. For example, Canadian Blower - Canada Pumps Ltd. of Kitchener, Ontario is reported to administer a medical questionnaire to both its male and female employees. The company has 395 workers, 50 of them women - mostly office workers. The female applicants are also asked to answer an additional section in the questionnaire on contraceptives, menstruation, breasts and pelvic organs. This section, for example, has such items as whether they take birth control pills, at what age they began menstruation, how many sanitary pads they use a day etc. (Globe & Mail, Oct. 31, 1980, p. 1). Similarly, Coinamatic, which runs coin-operated laundromats across Ontario and in Vancouver, Edmonton, Calgary, Montreal and Quebec City, asks their new male and female workers for information about their bowel movements, whether they have hot flashes, wet their bed or pants, have skin problems, or two or more alcoholic drinks a day. It asks women about their menstrual periods, how many pregnancies they have had and the number of children born alive. It is reported that a worker was fired because she refused to answer the questionnaire, (Globe & Mail, May 8, 1982, p. 5). These practices are not restricted to organizations in the private sector. The Windsor Board of Education's medicals became a human rights issues in January 1983,

when Labor Minister Ramsay ordered the Ontario Human Rights Commission officials to contact the board after learning that medicals will include controversial internal examinations of women. In a similar case (1982), the Essex County Board of Education in Ontario backed down from using the same type of extensive examination after pressure from the government ("Education board's medicals become human rights issues", The Windsor Star, January 21, 1983).

This brief review of the human rights implications of the staffing process can assist employers in (1) making their selection process job-related or valid for all employees, not just the minority groups, and in (2) abiding by the human rights statutes.

Part III provides a review of the human rights and other pertinent legislation.

Note

1. Most of Part II is based on chapters on personnel recruitment and selection by the author in a book, forthcoming.

References

Anstey, E. "A 30-years-follow-up of the CSSB procedure, with lessons for the future", Journal of Occupational Psychology, 50 (1977).

Arvey, R.D. Fairness in Selecting Employees. Reading, Mass.: Addison-Wesley, 1979.

_____, and J.E. Campion. "The employment interview: A summary and review of recent literature", Personnel Psychology, 35 (Summer 1982).

Berg, Ivar, Education and Jobs: The Great Training Robbery, New York: Praeger, 1970.

Casio, W.F.., and E.M. Award. Human Resources Management: An Information Systems Approach. Reston, Va.: Reston Publishing Co. Inc., 1981.

Cole, N.S. "Bias in testing", American Psychologist, 36 No. 11 (Oct. 1981), pp. 1076-77.

Dewey, M., "Employers take hard look at the validity and value of psychological screening" Globe and Mail, Feb. 7, 1981, p. B1.

Hakel, M.D. "Employment interviewing," in K.M. Rowland and G.R. Ferris (eds.), Personnel Management, Boston: Allyn and Bacon, Inc. 1982.

Jain, H.C. "Is education related to job performance?" in Contemporary Issues in Canadian Personnel Administration, edited by H.C. Jain, Toronto: Prentice-Hall Canada, 1974.

Landy, F.J. "The validity of the interview in police officer selection", Journal of Applied Psychology, 61 (1976).

Malkin, B. "Psychological testing: How useful is it?" Worklife, 5 (1982).

Miner, M.G. and J.B. Miner, Employee Selection within the Law, Washington, D.C.: The Bureau of National Affairs, 1979, revised.

Rothstein, M., and D.N. Jackson. "Decision making in the employment interview: An experimental approach", Journal of Applied Psychology, 65 (1980).

Rubenfeld, S., and M. Crino, "Are employment agencies jeopardizing your selection process? Personnel, 58 (Sept.-Oct. 1981).

Sackett, P. And P. Decker. "Detection of deception in the employment context: A review and critical analysis", Personnel Psychology, 32 (1979).

Schmidt, F.L., J.E. Hunter, R.C. McKenzie, and T.W. Muldrow. "Impact of valid selection procedures on work-force productivity", Journal of Applied Psychology, 64 (Dec. 1979).

Tefft, M., "Why more firms rely on psychological tests", Financial Post, Dec. 12, 1981.

Tenopyr, Mary. "The realities of employment testing". American Psychologist, 36, (Oct. 1981),1120-1126.

Part III

Canada's Major International and National Obligations in the Human Rights Area

Canada has ratified numerous international human rights instruments. The country also has a Charter of Rights and Freedoms and human rights statutes in each jurisdiction. Both the Charter and the individual statutes have been influenced by Canada's ratification of the international covenants and conventions.

First, the major international covenants and conventions in the area of human rights will be described and analyzed. Second, the Charter and the federal and provincial legislation will be discussed.

On December 10, 1984, the United Nations (UN) General Assembly proclaimed the Universal Declaration of Human Rights. For the first time, nations representing a majority of the world's population agreed on a common standard of human rights, and on the fundamental importance of protecting and safeguarding the human rights of all people.

While the Universal Declaration has had wide impact throughout the world inspiring national constitutions and laws, etc. it remains a statement of ideals. It is no more than morally binding on member states of the UN. Some member states pressed for creation of treaties which would establish real obligations on the part of member states. As a result, two major international Covenants and an Optional Protocol were drawn up.

These are: the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. They were adopted unanimously by the United Nations General Assembly on December 16, 1966. On May 19, 1976 Canada acceded to these three instruments; they came into force on August 19, 1976.

The International Covenant on Civil and Political Rights is largely devoted to civil and political rights as set out in the Universal Declaration of Human Rights. It guarantees the fundamental freedoms of speech, religion, association and assembly, the right to vote, equality rights and certain basic rights pertaining to the nature of the criminal process.

The rights in this Covenant have been set forth in such historically important documents as the American Declaration of Independence in 1776 and the French Declaration of the Rights of Man and of the Citizen in 1789, and the Canadian Charter of Rights and Freedoms.

Perhaps the most important development in international human rights law since the 1948 Universal Declaration has been the Optional Protocol. This Protocol to the Covenant for the first time provides individual people with some recourse in an international forum if these rights are violated. For instance, when a country which is party to the Covenant has ratified the Optional Protocol, people within its jurisdiction may make communications to the Human Rights Committee alleging that it has violated their Covenant Rights. If the Human Rights Committee finds the communication to be admissable - in particular, if all available domestic remedies have been exhausted - it will then consider the communication on its merits and forward its views on the matter to the individual and the country concerned.

The International Covenant on Economic, Social and Cultural Rights also elaborates on the Universal Declaration. It includes articles recognizing the right to work, to just conditions of work, to form and to join trade unions, to social security including social insurance, to freedom from hunger, to an adequate standard of living, and to health and education.

The forms for monitoring and implementing the existing instruments of human rights are varied. In the case of the International Covenant on Economic, Social and Cultural Rights, States parties are obliged to submit reports on measures that they have adopted and the progress made in achieving the observance of the rights recognized in the Covenant, for consideration by the Economic and Social Council and the General Assembly. The Council may also transmit the report to the Commission on Human Rights.

Implementation of the International Covenant on Civil and Political Rights is, as noted above, through the Human Rights Committee. This takes place within one year of the entry into force of the Covenant for the State concerned and thereafter as requested by the Economic and Social Council.

These and other international obligations have changed the traditional concept that, on grounds of national sovereignty, the treatment of its nationals is within the unfettered discretion of a State. In practice, an individual may still be at the mercy of his or her Government, but this has also become a matter of continuing international concern.1

Impact on Domestic Scene: For instance, the Optional Protocol has already made some impact on Canada. So far, there have been 13 Communications alleging that Canada has violated the International Covenant on Civil and Political Rights. As yet, Canada has been found to be in breach in regard to two of these communications.2 One involved a delay in the hearing of an appeal, and the other was the communication brought by Sandra Lovelace. She alleged that section 12(1)(b) of the Indian Act deprives Indian women but not Indian men of their Indian status upon marrying non-Indians. This also results in their losing

their right to reside on the reserve. The Human Rights Committee found that article 27 of the Covenant on minority rights had been violated by Canada. This case generated a great deal of adverse publicity within and outside Canada. As the former Minister of Justice and Attorney-General of Canada has acknowledged, "the Lovelace case was an important factor... for convening a Parliamentary sub-committee on Indian women and the Indian Act in 1982, which in its report recommended the repeal of section 12(1)(b). Moreover, steps are now being taken to amend the Indian Act, not only to respond to objections of the Human Rights Committee in regard to existing legislation, but also to ensure that new provisions in the Indian Act show a degree of sensitivity to and respect for the various rights set forth in the Covenant."3 Other significant issues the Committee dealt with are whether the Covenant accords public servants the right to strike, and prison inmates the right to vote in general elections etc.

In addition to the two Covenants above, the UN has also developed a number of Conventions which apply to specific human rights areas. Canada has ratified the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women.

The International Convention on the Elimination of All Forms of Racial Discrimination: This Convention condemns racial discrimination in all its forms. Countries which have ratified this Convention have committed themselves to pursuing a policy of eliminating racial discrimination and promoting understanding among all races. In particular, governments of the ratifying countries undertake to engage in no act or practice of racial discrimination against persons, groups of persons, or institutions; take effective measures to review governmental policies and ensure laws and regulations do not have the effect of creating or perpetuating racial discrimination; to prohibit and bring to an end, by law if required, racial discrimination by persons, groups, or organizations; and to encourage integration and multi-racial organizations to eliminate barriers between the races.

The Convention also condemns racial segregation and apartheid, all propaganda and all organizations which promote the superiority of one race or group of persons or promote racial hatred and discrimination in any form, and ratifying countries undertake to prevent; prohibit and eradicate all practices of this nature. Canada ratified this Convention on October 14, 1970.

The International Convention on the Elimination of All Forms of Discrimination Against Women: Countries which have ratified this Convention condemn discrimination against women in all its forms, and have agreed to pursue a policy of eliminating discrimination against women. The Convention provides that women, on an equal basis with men, shall have the right to

receive education in a non-discriminatory atmosphere, be equal with respect to employment and receive equal pay for work of equal value; be provided with maternity leave from employment with pay or with other comparable social benefits; and have access to health care services. The Convention was ratified by Canada on December 10, 1981.

These two Conventions will be dealt with later in this paper with reference to similar employment-related Conventions of the International Labour Organization (ILO).

Although the other international human rights treaties that Canada ratified do not provide individuals with the right to make complaints to international bodies, they have other monitoring procedures such as reporting requirements. This means Canada is required to prepare reports on the extent to which it is in compliance with the particular treaty in question. This report is the subject of examination in the form of comments and questions by an international committee.

The international human rights law also has an impact on Canadian laws as well as Canadian judiciary.[4] It prods Canada into amending or enacting laws to be able to comply with its international obligations. As noted, the International Covenant on Civil and Political Rights and other instruments had a great deal of impact on the Charter of Rights and Freedoms. There is also a regular mechanism to check on Canada's compliance with international human rights obligations in the form of the Federal - Provincial - Territorial Ministerial Conference on Human Rights which meets regularly. The Canadian judiciary has already referred to the International human rights law in some significant Charter cases.[5]

While the International Covenants and other treaties ratified by Canada provide individuals awareness of international standards in human rights, and to some extent the backing of the international legal system and other mechanisms in case of complaints, there are no direct international enforcement mechanism. The only international court is the International Court of Justice at the Hague. However, it does not have jurisdiction to hear complaints from individuals. The Optional Protocol allows individuals some recourse through communications to the Human Rights Committee if they feel that their Covenant rights have been violated. But unlike a court, it is called a "committee", individuals "make communications" to it rather than instituting actions, and the committee "communicates its views" rather than render judgements. Thus, neither the judgements of the International Court nor the communications of the committee have any enforcement power and need not be binding.

The International Labour Organization (ILO): The ILO was founded in 1919 under the Peace Treaty of Versailles, together with the League of Nations, of which it was an autonomous part. The ILO outlived the League to become in 1946 the first specialized agency associated with the United Nations.

Canada has been a member since the ILO was founded in 1919. For many years, Canada has played a prominent role as a member of the ILO Governing Body.6

The objective of the ILO is social justice, as a basis for universal and lasting peace (as declared in the Preamble to its constitution in 1919). Its main concern is the improvement of conditions of work and pay.

To achieve these ends, conventions and recommendations, which set international labour standards, are formulated and adopted by the international labour conference. Through ratification by Member States, conventions are intended to create binding obligations to put their provisions into effect. Recommendations provide guidance on policy, legislation and practice.7

Since much of the ILO's work requires co-operation among governments, employers, and workers, an important feature of the ILO is its tripartite system of representation, bringing together delegates representing these often conflicting views. This system is unique among UN agencies.

It enables the representatives of workers and employers to be on equal footing with those of government and to take part in formulation of ILO policies and the process of decision making, and in the standard-setting activities. Thus, the tripartite system combines the partisan interests of private voluntary organizations and the Member State.8 The system applies in the International Labour Conference, the Governing Body and in other ILO conferences and meetings.

The International Labour Conference meets annually. It is the supreme authority of the International Labour Organization. Each member state has the right to send four delegates to the Conference: two from the government, and one each representing workers and employers (each of whom may speak and vote independently as noted above). The annual Conference provides an international forum for discussion of world labour and social problems. Much of its work is devoted to setting new minimum international standards and to monitoring the extent to which the governments of member states are observing the extensive series of standards already adopted at previous conferences.

Between conferences, the work of the International Labour Conference (ILO) is guided by the Governing Body comprising 28 government members and 14 workers and 14 employer members. The work of the Governing Body and of the office is supplemented by tripartite committees covering major industries, and by meetings of experts on such matters as the special problems of women and young workers, occupational health and safety. Regional conferences of ILO member states and meetings of regional advisory committees are held periodically to examine matters of general interest to the regions concerned.

Each Member State is required to consider all conventions and recommendations adopted by the Conference and to take a decision as to the action to be taken on them. The ILO has established a supervisory procedure to ensure their application, based on the objective evaluation by independent experts of the manner in which obligations are complied with and an examination of cases by the organization's tripartite bodies.

As part of its monitoring responsibility, the ILO requests member countries to submit detailed reports every second or fourth year on the application of conventions that have been ratified. In addition, each year the ILO makes a special study of one or more conventions and their companion recommendations. On such occasions, Canada prepares a report on the particular instrument selected for study by the ILO and which for some reason it has not ratified as yet. An annual meeting of the deputy ministers' of labour and a tripartite meeting is held to consider ILO questions.[9]

The organizational structure of the ILO has several advantages for the parties concerned. For employers and trade unions in the free world, their representatives have the right to insist that governments (including their own) take account of their opinions in trying to find solutions to common problems such as setting minimum new standards. Governments benefit by the debates, and all the expertise and background material provided by ILO and by such discussions in considering the adoption of these standards in their respective countries.

All three parties benefit by the consensus that is created by reconciliation of conflicting views. The final balance which is struck is generally "neither pie in the sky" nor a repetition of already existing standards. The participation of trade union and employer representatives contribute to making these standards both practical and practicable.

From the employers' perspective, it makes economic sense to (1) obtain international agreements to regulate employment conditions so that similar conditions of employment will prevail in all competing markets abroad, (2) to press strongly (through participation in the International Organization of Employers (IOE) located in Geneva with 88 members from various countries in 1981) for international standards to be practicable in the real world of industry and commerce, and to (3) represent their common interests in internation inter-governmental organizations; for instance, the IOE has full consultative status with the United Nations.[10]

Similarly, from the trade union perspective, the ILO standards can be used in defending trade union and worker interests and trade union and employee protection and advancement. This is because several ILO conventions seek to guarantee an

employee's right to join a trade union, a union's right to organize and to collective bargaining, protection against arbitrary termination of employment of workers etc. These and other ILO standards cover the entire field of subjects applicable to work and life, not only conditions of work. Moreover, even if countries do not ratify a convention, trade unions can, and do, use ILO Conventions in collective bargaining. The ILO standards provide a strong point in such negotiations. In the case of ratified Conventions, the task of monitoring compliance of the standards is a central feature of the annual conference proceedings.11 The ILO monitors compliance on the basis of the findings of the Committee of Experts, an independent committee of jurists, on the application of Conventions.

Special procedures dealing with the protection of trade union rights: There are two procedures that deal with the complaints regarding violations of trade union rights. Under the first procedure, the Fact-finding and Conciliation Commission on Freedom of Association, established in 1950, can examine complaints against countries who are members of the United Nations (UN) but not of the ILO as well as countries who are members of the ILO who have or have not ratified the freedom of association conventions. The Commission, however, can only examine complaints of these violations against countries who are U.N. members (but do not belong to the ILO) if the government concerned agrees to have the case transmitted to it. In the case of countries who are members of the ILO, prior consent of the government concerned is required for the Commission to examine a complaint. The Commission has been convened only rarely (5 times) since governments have been reluctant to give their consent.

Under the second procedure, the Committee on Freedom of Association of the Governing Body of the ILO, established in November 1951, deals with complaints filed against countries (of the ILO) which have, or have not, ratified the freedom of association conventions. Unlike the first procedure, the consent of the governments concerned is not necessary for these complaints to be examined. From 1973 to 1983 the Committee received 400 new cases; it is clear that this is the most used procedure. Complaints regarding violations of trade union rights must come either from a national organization directly interested in the matter, by an international organization of employers or workers having consultative status with the ILO, or other international organizations of employers or workers where the allegations relate to matters directly affecting an organization affiliated to them. The complaints must be submitted in writing, duly signed and supported as completely as possible with proof of the allegations. The Committee can undertake missions on the spot and hearing of the parties.[12]

Although the ILO has no power to enfore its findings if a member state has violated its conventions, they do generate a great deal of world wide publicity, moral sanction and condemnation. Some recent cases will illustrate the types of recommendations the ILO has rendered on cases pertaining to Canada on the

freedom of association convention. In case No. 893 (1980) the Canadian Labour Congress (CLC) complained of Alberta legislation which placed a general prohibition on the right to strike by public employees. The ILO Tripartite Committee on Freedom of Association interpreted convention No. 87, Freedom of Association and Protection of the Right to Organize, to require Alberta to distinguish between publicly owned undertakings which are genuinely essential and those which are not in the strict sense of the term. In cases number 1070 (1982) and 1071 (1982) the CLC complained of similar legislation in Nova Scotia and Ontario. The ILO Committee found both laws violative of Convention number 87. Moreover, Ontario's law interfered with collective bargaining in matters relating to conditions of employment, disapproved by the Committee.[13]

Similarly in a recent decision (1983) the Supreme Court of Ontario ruled that the government of Ontario violated the Canadian Charter of Rights and Freedoms by restricting bargaining of public sector unions on non-monetary issues in its two year wage control program in 1982. The Service Employees Union joined by other unions had challenged the constitutional validity of the Ontario law and argued that the Act violated the fundamental freedom of association guaranteed by the Charter in that it interfered with the right to organize and restricted non-monetary collective bargaining. Two of the three judges placed substantial emphasis upon ILO Convention No. 87 and the rulings of the ILO Freedom of Association Committee thereunder. Thus, ILO decisions as to the meaning of freedom of association have great importance in determining the scope of freedom of association under the Charter of Rights and Freedoms.[14]

In case No. 1147 the CLC, and other unions alleged that the federal government had violated ILO conventions on freedom of association by imposing its 6-5 wage-restraint program (Public Service Compensation Restraint Act) on public sector workers for two years. The ILO Committee on Freedom of Association rejected this complaint in March 1983. However, at the request of the Inter-Union Committee against wage control and later (Nov. 1983) the CLC on behalf of the Public Service Alliance, the ILO Committee reviewed the case again. The Committee reaffirmed in May 1984 its earlier decision that (a) the right of civil servants to establish and join organizations of their own choosing is not affected by the Act, and that (b) restrictions on the right to collective bargaining are of exceptional nature; they do not exceed a reasonable period; and such restrictions are accompanied by adequate safeguards to protect worker's living standards. The committee, however, expressed its regret that the manner in which the Act was being applied in practice precluded negotiations on previously negotiated compensation plans which provided for increases in excess of those allowed by the Act. It urged the government to establish procedures to settle disputes, terms and conditions of employment etc. which are independent, impartial and generally acceptable to unions.15

Case No. 1171 deals with three pieces of legislation, Acts numbers 70 and 105 (of 1982) and No. 111 of (1983) passed by the government of Quebec. The ILO committee expressed concern that Acts numbers 70 and 105 "imposed salary reductions on certain salaried employees in some cases in the order of 18 percent, by proclaiming that the requirements of government financial policy take precedence over collective agreements". The Committee also noted that the imposition under Act No. 105 of such restrictions for three years was too long.

Following its previous approach to the question of restrictions on the right to strike as expressed in previous cases such as case no. 893 concerning Alberta, the Committee exhorted the government of Quebec to restore the right to strike (imposed on teachers until 1985) since teachers do not work in an essential service in the strict sense of the term.[16]

Cases 1173 and 1235 involve the Government of British Columbia. Both cases deal with mainly three statutes (1983) in that Province. There are Bill 3 (The Public Restraint Act), Bill 11 (The Compensation Stabilization Act), and Bill 26 (The Employment Standards Act). The ILO Committee recommended that (1) the government should not use economic reasons as a pretext for dismissal based on anti-union grounds; (2) the use of financial powers to block fulfillment of previously negotiated collective agreements is inconstistent with the principles of freedom of association, Convention No. 87.17 The government, the Committee held, had interfered in collective bargaining through legislation to reduce the amount of pay received by teachers in 1982-83 school year; (3) only public servants engaged in the administration of the State can be excluded from the collective bargaining process. Bill 26 gave too wide a discretion to the Director of Employment Standards. The Committee considered his power to replace negotiations on collective agreements with the minimum standards in the Act, when, in his opinion, negotiations are not leading to a settlement as contrary to Convention No. 87. The committee urged the government to introduce amendments to reduce the wide powers given to the Director.[18]

The ILO Committee is expected to give consideration to case No. 1260 pertaining to Bill 59 proclaimed in August 1983 by the government of Newfoundland. Bill 59 is an Act to amend the Public Service (Collective Bargaining) Act, 1973. The complaint to the ILO by the National Union of Provincial Government Employees (NUPGE) on behalf of the Newfoundland Association of Public Employees (NAPE) pertain to sections of the bill which include those concerning definition of employee, the method of designating of essential employees, and the legislation's limitations on strikes, principally, the requirement that essential services be in place before there is a strike or a strike vote and the prohibition of rotating strikes in health care institutions.[19]

The ILO voted unanimously on November 14, 1984 to send a fact-finding mission to Canada. The ILO wants to investigate the alleged unfair labour practices by the governments of Alberta, British Columbia, Ontario and Newfoundland. Five separate laws are involved, two in Alberta, and one each in the other three provinces.

The Alberta laws being questioned by the ILO deprive public servants of the right to strike and give the province the authority to punish unions in the case of illegal walkouts by suspending payroll deductions for up to six months.

Laws involved in other provinces involve loss of job security in B.C., imposition of wage controls in Ontario and reduced strike rights in Newfoundland.20

Some general conclusions can be drawn from the ILO recommendations discussed above. First, the right to strike can only be restricted in strictly essential services or in the Civil Service with respect to officials acting in their capacity as agents of public authorities, with adequate guarantees to safeguard the interests of workers via binding conciliation or arbitration proceedings. Second, conditions of employment, non-monetary issues etc. should not be excluded from collective bargaining. Third, the ILO recognizes that economic stabilization measures which restrict the right to collective bargaining might be acceptable. Nevertheless, these measures are acceptable "on condition that they are of an exceptional nature, and only to the extent that they are necessary, without exceeding a reasonable period, and that they are accompanied by adequate safeguards to protect workers living standards," (case No. 1147). In addition, according to ILO, such restrictive measures should only be undertaken as a last resort, after serious efforts have been made to reach an agreement voluntarily between the parties concerned.21 Fourth, the use of financial powers to block fulfillment of previously negotiated collective agreements is denial of the principles of freedom of association and collective bargaining.

Canada has also ratified the ILO Conventions on equal pay and equal employment. In 1951, the ILO adopted the Equal Remuneration Convention (100), embodying the principle of equal remuneration for men and women workers for work of equal value. Canada ratified this Convention in 1972. Similarly, in 1958, the ILO adopted the Discrimination (Employment and Occupation) Convention (No. 111) which was ratified by Canada in 1964. Each ratifying country undertakes to promote equality of opportunity and treatment in employment with the aim of eliminating discrimination.

Discrimination includes any distinction, exclusion, or preference on the basis of race, colour, sex, religion, political opinion, or national or social origin which may impair such equality. The terms "employment" and "occupation" also include

access to vocational training and the terms and conditions of work.

Equal pay for work of equal value: All jurisdictions in Canada have equal pay laws. While the federal and the Quebec laws require equal pay for work of equal value, consistent with the ILO Convention (100), other jurisdictions have laws which require equal pay for same, similar or substantially same or similar work usually within the same establishment, without discrimination on the basis of sex. These provisions have been incorporated either in human-rights legislation (federal jurisdiction, Alberta, British Columbia, New Brunswick, Newfoundland, Northwest Territories, Prince Edward Island, and Quebec) or in labour-standards legislation (Manitoba, Nova Scotia, Ontario, Saskatchewan, and Yukon Territory). Federal labour laws in Canada cover only about 10 percent of the labour force, with provincial governments having jurisdiction over the remaining 90 percent.

The legislation in a majority of jurisdictions provides for a general exception permitting differentials between male and female pay based on any factor other than sex. In other jurisdictions, specific exceptions are listed which include seniority, work experience, and merit.

A number of court decisions have helped to provide a more precise interpretation of equal-pay legislation in Canada. In the Greenacres Nursing Home case in 1970, the Ontario Court of Appeal ruled that "the same work" did not necessarily imply "identical work," and also that job comparisons should be based on work actually performed rather than on formal job descriptions or terms of employment. In the Riverdale Hospital Case in 1973, the concept of equal work was broadened even further. In this case, the Ontario Court of Appeal ruled that: (a) different job titles do not necessarily indicate different work, (b) slightly different job assignments do not make the work unequal, and (c) within an occupation, as long as some men do the same work as women, equal pay is justifiable for the whole occupation. The last point was further clarified in a case (University of Regina, 1976) in which the Saskatchewan Court of Appeal stated that although only five out of 46 males caretakers performed work similar to female cleaners, such a small number is sufficient for equating all female cleaner jobs with those of male caretaker jobs and hence there is no justification for one group to be paid less than the other group.

The courts have also ruled that a collectively bargained contract is not adequate justification for pay differentials. For example, the Attorney General of Alberta and Gares et. al., 1976 case before the Alberta Supreme Court involved a complaint by seven nursing aides that they were not being paid wages equal to those of nursing orderlies doing similar work. The employer (hospital) admitted that the work was the same, and that women were paid less. But the hospital alleged unsuccessfully that the existence of different collective agreements with the male and

the female employees was the cause of differential rates; the employer claimed that this (two collective agreements) was a factor other than sex which justified the difference.22

So, for purposes of conforming to the equal pay laws, similarity of work needs to be established on the basis of actually performed work and not the formal job description, job titles, job assignments (which may be slightly different), or terms of contract. The equal pay laws also prohibit pay differentials between job categories even if only a minority of job incumbents in the two job categories perform similar tasks; human rights legislation takes precedence over privately negotiated collective agreements.

What about management's right to assess work performed and fix pay scales? In two separate decisions in the federal jurisdiction - the C.T.V. Television Network Case (1975) and the La Société Radio Canada Case (1977) - the courts have ruled that differences in the quality of work as assessed by management are sufficient to justify unequal pay. The courts acknowledged here that such an assessment might be subjective and thus might involve an error in judgement; that it was not within the competence of the judiciary to review management's judgement.

So what follows from the several judicial decision reviewed above in regard to equal pay legislation is that managerial decision making needs to be responsible and defensible. They call for systematic, rigorous, and acceptable (to the parties concerned and to the courts) job evaluation methods and procedures. They call for equity and justice within the organization.

The cases discussed above involve equal pay for equal work laws. The Canadian Human Rights Act, which came into effect in 1977, embodies the equal value principle, as noted above. According to this legislation, men and women performing work of equal value (regardless of whether the work is similar or dissimilar) must be paid equal wages. The Act goes on to elaborate how the value of work may assessed. Section 11(2) of the Act specifies that in assessing the value of work performed by employees in the same establishment the criterion to be applied is the composite of the skill, effort, and responsibility required in the performance of the work and the conditions under which the work is performed. The Quebec Charter of Human Rights and Freedoms (section 19) also calls for equal pay for equivalent work. Both the Quebec and the federal statutes cover about one-third of the Canadian labour force.

Between 1978 to mid 1984, the Canadian Human Rights Commission had received 68 complaints involving unequal pay between men and women for work of equal value. Twenty-six of these complaints were withdrawn or dismissed. Nineteen were settled, resulting in about $20 million in retroactive pay for about 4,600 workers and annual pay increases totalling $12

million in the first year after the settlements. In the case of another 1,300 workers, employers, following settlements, voluntarily applied the equal pay for work of equal value principle. Two complaints involving the Treasury Board and the Atomic Energy of Canada Ltd. were before an independent human rights tribunal for decision, and nineteen were under investigation.[23]

Eleven of the complaints on equal pay involved the federal public service. Five of these have been settled. Two complaints were dismissed for lack of sex dominance in the female complaint group; and four cases were under investigation24.

In a recent (December, 1982) case, retroactive and increased pay was agreed to between the Treasury Board - the federal employer - and the Public Service Alliance of Canada, which represented the registered nursing assistants at Winnipeg's Deer Lodge hospital, and approved by the Canadian Human Rights Commission (CHRC). At issue was discrimination in personnel policies and practices (section 7 and 10 of the CHRA) rather than pay per se. The registered nursing assistants (RNA's), mostly women, complained that they had considerably more vocational training and greater responsibility for patient safety than did nursing orderlies and that they should receive more pay. Both groups were covered under a common hospital evaluation plan and had the same number of points for training even though the RNAs had to complete a formal training period averaging 39 weeks before beginning their duties compared to a two-week course followed by an unspecified period of on-the-job training for nursing orderlies. Investigation also revealed that there was no significant difference in the two groups' responsibility for patient safety.

The Treasury Board agreed that the difference in occupational training warranted an increased evaluation for RNAs. As a result, each RNA was eligible to receive about $1300, retroactive to December 12, 1979 (one year prior to filing the complaint) and an average annual increase of about $900. This means that more than 200 RNAs will share $28,000 in back pay and $150,000 in annual increases.25

A second case, the largest to-date, settled in March, 1982, involved female - dominated subgroups of the General Services occupational group. These subgroups covered jobs in the kitchen, laundry, and miscellaneous personal services; 2,300 out of 3,300 in this group were women. The male - dominated subgroups included jobs in building (repairs, maintenance, etc.), messenger, custodial and stores services. The former, it was alleged, were being paid less than the latter. All jobs were hourly paid at single rates in up to 13 levels and 22 geographical pay zones.

All subgroups were subject to the same job evaluation plan. However, pay rates in the various subgroups differed, each being based on its own historical job market. The complaint, filed by the Public Service Alliance of Canada (PSAC), requested

that the rates of the female subgroups be raised to that of the highest paid male subgroup. The employer, in the last proposal, offered to adjust female subgroup rates in each level and zone by a percentage that would equalize the average of the female subgroup rates with the average of the male subgroup rates. The CHRC rejected the offer and appointed a tribunal.

However, before the date of the tribunal hearing, a new collective agreement eliminated the subgroups. The PSAC and the Treasury Board established one rate for all seven groups and this was accepted by the CHRC.

The case was labelled as a landmark agreement. It involved $17 million in retroactive pay to November, 1978 and averaged 20 percent of base pay (or $5,000) for each affected employee.[26]

Another case (1980) involved the library science (LS) group - predominantly female - and the historical research (HR) group - predominantly male. The former had alleged that they were being compensated at a lower rate than the latter even though they were performing work of an equal value. Since the employer - the Treasury Board - used a separate evaluation plan for measuring the value of jobs in each group, new evaluations, using one plan, were performed by the union, the employer and the CHRC from a sample of 50 HR and LS positions. The analysis from the job evaluation plan showed that the librarians (LS) were being paid less for work of equal value. The CHRC reached a $2.3 million settlement retroactive to March 1, 1978, the day the Act went into effect. The settlement provides for equalization adjustments ranging from $500 to $2,500 annually for some 470 librarians plus back pay of up to $5,900 each.[27]

All the above cases involved the Treasury Board and PSAC. A complaint involving the Atomic Energy of Canada Ltd. at Glace Gay, N.S. has been referred to a tribunal by the CHRC as of September, 1983. In another case involving the Canadian National Railway, nurses and X-ray technicians were awarded $130,555 in back pay in settlement (December, 1983) of their complaint that male para-medics were paid more for doing work of equal value.[28]

The Quebec Human Rights Commission has also carried out investigations in the equal value area. According to a report (February, 1984) by Alberte Ledoyen for the Quebec Human Rights Commission (QHRC), the Commission has carried out 37 investigations regarding equal pay for equivalent work since June, 1976 when the Quebec legislation came into force. 30 out of 37 complaints pertained to the private sector. Of the 37 investigations, 20 reached the mediation stage; 12 were dismissed while in another 5, the complainants withdrew. Five of these cases were referred to a tribunal.29

The total amount of settlements reached was about $500,000 benefitting about 1,000 women directly and 3,500 females

indirectly for backpay only. This does not include salary adjustments. The average wage gap was 60 cents an hour and it ranged from 11 cents to $1.42. Almost all the females were unskilled workers in industries such as food and beverage, paper and tobacco industries; they belonged to a trade union.30

The QHRC found that situations involving discriminatory wage gaps were rooted in systemic or institutional discrimination. Sex segregated or male and female jobs resulted in a dual system of employment based on gender instead of qualifications or individual potential.

These policies had a discriminatory effect on hiring practices, promotions, layoffs, vocational training and a part of the wage-gap. The difference in wages became a part of the entire employment system and was institutionalized by integration of discriminatory clauses into the terms of collective agreements.

As Ledoyen points out, eight years after the equivalent work legislation in Quebec, most of the cases involved equal or substantially equal work rather than equal pay for equivalent work. As for equivalent work cases, they all involved manual jobs. Only one case involved a comparison between blue and white collar jobs. This was the Quebec North Shore case. In this case, receptionists and other clerical jobs, performed exclusively by women, were compared to surveyor's assistants jobs, performed by men. The company had a job evaluation system, which assigned the same score to the two job categories, but not the same wages. Following the investigation, parity of wages was established and all 24 women in clerical jobs had their wages readjusted.31

In addition to these negotiated settlements, the QHRC has, through the Department of Labour, coded collective agreements registered in the Department's data bank according to the variable "appearance of discrimination" since January, 1982. As of August, 1983, 412 collective agreements (or 14 percent of 2,956 coded for this variable) contained an "appearance of discrimination" based on sex. These 412 collective agreements are drawn from almost all sectors of economic activity and involved the following types of discriminatory measures, shown in table 1.32

In Ontario, the Employment Standards Branch of the Ministry of Labour conducts routine investigation of employers to detect violations in the equal pay area. An equal pay investigative unit was established for this purpose in March, 1980. Between that time and July, 1983, a comparison of claims initiated by employees and routine investigations initiated by the unit show that the annual wage increases to achieved parity amounted

Table 1
Discriminatory Measures in Collective Agreements in Quebec

Type of measure*	Number of measures of apparent discrimination	Number of employees covered
Seniority rules	6	628
Length of probationary period	2	6
Overtime	2	214
Retirement pension cost	1	5
Work Schedule	35	4238
Pay scale	75	2709
Job titles	272	8550
Clothing maintenance	103	2407
Other provisions	56	5098

*These categories are not mutually exclusive.

Table 2a
Equal Pay Investigations in Ontario

Summary of Program Statistics
March 21, 1980 - July 31, 1983

	Claim Initiated by Employee	Routine Investigations Initiated by Unit	Total
File Intake/Assigned	449	233	682
Consultations	21	XXX	21
Completions	386	216	602
Outstanding	42	17	59
Employers Found:			
In Compliance	283	189	472
In Violation	103	27	130
Backpay Assessed ($)	525,874	429,632	955,506
# Employees Benefited	724	1,165	1,889
Per Annum Wage Increases To Achieve Parity ($)	461,903	840,693	1,302,596
# Employees Benefited	71	1,127	1,198

Table 2b
Equal Pay Violations in Ontario

Violations by Industry

	Claim Initiated by Employee	Routine Investigations Initiated by Unit	Total
Hotels, Motels	1	17	1
Hospitals, Nursing Homes	14	17	31
Manufacturing	22	2	24
Restaurants, Taverns	6	-	6
Retail Sales	11	3	14
Transportation	3	1	4
Other	46	4	50
			130

to $461.903 benefitting 71 employees in the former case and $840,693 benefitting 1,127 employees in the latter case. Thus, routine investigation of employers benefitted more employees and brought about close to twice the total amount in annual wage increases, see table 2.33

Implications for Policy-makers:

It is clear from this review of evidence that managerial decision-making needs to be responsible and defensible. Job evaluation methods need to be systematic, vigorous, and acceptable to the parties concerned such as employees, trade unions, etc., and to administrative agencies, tribunals and courts. Decisions and settlements referred to above call for equity and justice within the organization. Moreover, a job evaluation plan carried out in collaboration with the union may yet be unjust and does not absolve management from its responsibility to set equitable wage levels.

Some critics believe that job evaluation is intrinsically discriminatory against women. It reflects market value and fails to measure any intrinsic value of the job. Despite these and other criticisms, the administrative agencies and courts have accepted job evaluation as a measure of equal value. As noted above, a properly constructed and implemented job evaluation system may act as a preventative to complaints and litigation. It may also serve as a bona fide defence.

The Quebec cases point to institutionalized or systemic discrimination and, therefore, the importance of all personnel policies being applied in a uniform sex-blind manner to all employees. Any job classification that results in sex-segregated positions, as in the Quebec collective agreements provisions, should be investigated to determine if the classification is indeed based on bona fide job differences. Any policy that may be used as an allowable defence by the statutes such as merit, seniority systems or some "other than sex" defence needs to be formalized. Careful review of staffing policies may help weed out existing discrepancies and prevent any future occurrences.

Equal Employment Legislation: As in the case of equal remuneration, all jurisdictions in Canada have introduced human-rights legislation to provide equal employment opportunity.

Prohibited Grounds and Coverage Under the Laws:

The prohibited grounds of discrimination in employment include race, religion, colour, national or ethnic origin, marital status, and age; age groups protected vary among jurisdictions, with the most common being between the ages of 18 and 65 and 45 to 65. Physical disability is proscribed in most jurisdictions. Other prohibited grounds include sexual orientation in Quebec and pardoned offences in the federal, Ontario and Quebec jurisdictions.

Generally, the relevant statutes apply to employers, employment agencies, and trade unions and, in some jurisdictions, to self-governing professions. Discrimination is prohibited with respect to advertising, terms and conditions of employment, including promotion, transfer, and training.

Legal Definition of Employment Discrimination: Direct or intentional discrimination involves searching for a motive or an intention to discriminate on any of the prohibited grounds of discrimination above by an employer. It means having to prove prejudicial treatment namely harmful acts motivated by personal antipathy towards the group of which the target group was a member. Thus, intent to discriminate must be proved.34

Increasingly, however, there has been a realization that employment discrimination in most cases does not result from isolated, individual acts of bigotry but rather from historical assumptions and traditions which have become embedded in the normal operations of employment and industrial relations systems.

Systemic or Indirect or Unintentional or Constructive Discrimination:

The Canadian Human Rights Act as well as numerous decisions by boards of inquiry in several provinces have borrowed the legal definition of discrimination from the U.S. case law and the relevant British legislation. In the U.S. the concept of indirect or systemic discrimination was articulated by the Supreme Court in Griggs v. Duke Power Co. case in 1971. The Court unanimously endorsed a results-oriented definition of what constitutes employment discrimination. The Court indicated that intent does not matter; it is the consequences of an employer's actions that determine whether it may have discriminated under Title VII of the Civil Rights Act. In this case, the Court, struck down educational requirements and employment tests on two grounds. (a) These requirements could not be justified on the grounds of business necessity since they were not valid or related to job performance. Moreover, (b) they had adverse impact since they screened out a greater proportion of blacks than whites. However, if business necessity could be proved i.e. if the educational and testing requirements that had disproportionate or adverse impact on minorities were in fact related to job performance, then the practice was not prohibited. Thus, disproportionate impact is not sufficient to outlaw credentialism, tests and other hiring standards. Business necessity is the prime criterion in hiring and promotion decisions.[35]

The approach adopted in the Griggs case has been adopted in Canada in both equal pay and equal employment cases. In the employment area, for example, one of the leading cases which changed the intent to discriminate situation involved a member of the Sikh faith. He complained to the Ontario Human Rights Commission, after he was refused a job as a security guard. The dress and grooming regulations of the firm to which

he had applied required employees to be clean shaven and to have their hair trimmed. The Sikh applicant wore a turban and had a beard as required by his religion and therefore unable to comply with the firm's regulation. In this case, Ishar Singh v. Security and Investigation 1977, the Ontario Board of Inquiry found that the "employer bore no ill will towards Sikh people... had no intention to insult or act with malice... and did not have the intention or motive of discrimination". The board, however, found that the effect of the employer's policy which required that their security guards be clean-shaven and wear caps, was to deny employment to Sikhs. It ruled that intention was not necessary to establish a contravention of human rights legislation.

A similar concern is reflected in a January 1979 board of inquiry case. In the case of Ann Colfer against Ottawa Police Commission the board decided that the Commission's minimum height requirement of 5 feet, 10 inches "virtually eliminates women as police constables", as only 5 percent of females in Canada are that height or taller. This height and weight (160 pounds) requirement, the board declared, had a disproportionate effect upon female gender relative to the male gender.[36]

The systemic approach is also evident in a variety of other board cases involving such diverse organizations as the B.C. College of Physicians, a B.C. mining company, a Saskatchewan food company, a branch of Royal Canadian Legion in New Brunswick, and a variety of organizations in Ontario including a taxi-cab co., the Liquour Control Board of Ontario, Hamilton Tiger Cats and an investigation security company. Similarly, in a unanimous decision a Quebec Court of Appeal declared that it is unecessary to prove the intention to commit a discriminatory act.[37]

Until early 1982, the concept of unintentional discrimination, that is, impact instead of intent, was becoming the prevailing view and the principle in Canada even in those jurisdictions without express indirect discrimination clauses in their human rights codes. However, the Ontario Court of Appeal in O'Malley on August 12, 1982 and the Federal Court of Appeal in the Canadian National Railway Company v. Canadian Human Rights Commission and K.S. Bhinder in April 13, 1983 have decided that intent must be proved to establish a human rights violation. The ruling in O'Malley will have no impact in Ontario since constructive or indirect discrimination has been written into the new Ontario Human Rights Code, which became effective in June, 1982; the O'Malley case was decided under the old Ontario code. Both the O'Malley and the Bhinder cases are at present on appeal to the Supreme Court of Canada. The Supreme Court is being asked to decide whether discrimination can be unintentional or systemic. In the meantime, in two recent (1984) cases, the Manitoba Court of Queen's Bench has ruled that intention to discriminate is not a necessary element of a contravention of the Manitoba Human Rights Act and that the Act contains results - oriented or impact language. The two cases are Wayne Osborne v. Inco Ltd. and

Canada Safeway v. Manitoba Food and Commercial Workers Union. The final resolution of impact vs. intent definition of discrimination is unlikely to occur prior to the Supreme Court of Canada's decisions in the O'Malley and the Bhinder cases, since several provincial statutes either contain language similar to the old Ontario code, or have no specific indirect discrimination provision. The recent human rights legislation, Bill 11, in British Columbia which received Royal Assent on May 16, 1984, is the only statute that provides for direct discrimination. The "reasonable cause" provision of the previous B.C. legislation has been dropped from Bill 11.

In the O'Malley case, Mrs. O'Malley had worked full-time for Simpsons Sears for seven years as a sales clerk in the ladies wear section. She accepted working on two out of three Saturdays as a normal part of her job until she joined the Seventh Day Adventist Church. Because of the religious requirement, of observing Sabbath from sunset on Friday evening to sunset on Saturday, she informed the store that she was unwilling to work on Friday evenings or Saturdays. The Personnel manager explained that the Saturday work requirement applied to all salespeople. She was asked to resign but she refused to quit. She was, therefore, transferred to part-time employee status. This caused reduction in her pay by almost one-half and loss of some fringe benefits, only available to full-time employees. She filed a complaint with the Ontario Human Rights Commission (OHRC) on the basis of religious discrimination.

Since the OHRC could not affect a settlement between the parties, a board of inquiry was appointed. The board concluded that the Saturday work condition amounted to unintentional discrimination. Therefore, the board decided, the Simpsons Sears store had a duty to offer her reasonable accommodation.

The Ontario Divisional Court and the Ontario Court of Appeal both decided that intention was essential to employment discrimination as defined by the old Ontario code; in addition, they decided that the old code did not have an indirect discrimination provision and that the Saturday requirement was a bonafide occupational requirement. In the Bhinder case, the complainant before the court was a practising Sikh, who after four-and-a-half years as a railway electrician was required to wear a hard hat when his work area was designated a hard hat area pursuant to the Canada Labour Code dress code regulations. Since Bhinder's religion required him to wear a turban and he decided to abide by the tenets of his faith, his employment was terminated by the employer. He filed a complaint with the CHRC claiming employment discrimination on the basis of religion.

Since no settlement could be reached by conciliation, the Commission appointed a tribunal. The tribunal found that wearing a turban had safety implications for no one except the electrician himself, and that wearing a hard hat was not a bona fide occupational qualification, even though the CNR had innocently imposed this requirement resulting in the adverse impact.

The tribunal ordered the railway to reinstate Bhinder with no loss of seniority and $14,500 in lost wages.

The Federal Court of Appeal overturned the tribunal decision. The Court ruled that (1) indirect discrimination does not exist in the language of the Canadian Human Rights Act, (2) employers are under no duty to make reasonable accommodation, and (3) the hard hat policy was a bona fide requirement.

Pre-employment discrimination decisions: Selected decisions rendered by boards of inquiry, and courts as well as conciliated settlements by human rights commissions include height and weight restrictions, refusal to consider racial and ethnic minorities and women for jobs by not granting an interview to these applicants, discriminatory (a) items in the application blank, (b) job advertisement, (c) job interviews, gender being not a bona fide occupational requirement, and job stereotypes.

Job Advertisement: Publication of advertisements which state a preference as to sex or age were not based on a bona fide occupational qualification, according to an Alberta Board of Inquiry decision in the White Court Star, 1976 case.

Many traditional job titles and descriptions used in employment advertising may be considered to be discriminatory. For example, even if an employer intends to consider both sexes for employment, a sexist job title can confuse applicants and lead to human rights complaints that only one sex was considered for the job. It is therefore important for employers to ensure their advertisements are non-discriminatory.

The following list of sexist and non-sexist job titles has been recommended for use by the human rights commissions in Ontario and British Columbia. While these titles are not specifically required by the provincial human rights codes, they follow the spirit of the law and help to avoid discriminatory job advertising.

SEXIST	NON-SEXIST
Auto partsman	Auto partsworker
Barmaid	Bartender, bar waiter/waitress
Bell boy	Bell hop
Body man	Bodyworker
Businessman	Business executive, manager
Cameraman	Camera technician, camera operator
Chairman	Chairperson, chair, moderator, group leader
Cleaning man, cleaning lady	Cleaner
Customer serviceman	Customer service representative
Delivery boy	Courier, messenger
Doorman	Door attendant
Draftsman	Draftsperson

Farm man	Farm hand, farm worker
Fireman	Firefighter
Foreman	Supervisor, foreman (M/F)
Frogman	Underwater technician
Girl Friday	General office worker, person Friday
Handyman	Handyperson, general worker
Host, hostess	Host/hostess
Housewife	Homemaker
Insurance man	Insurance agent
Janitor, janitress	Janitor/janitress, custodian
Journeyman	Journeyman (M/F)
Leadman	Crew leader, shift leader
Linesman	Line installer, line technician
Maid	Domestic help, housekeeper
Maintenance man	Maintenance worker
Man, woman, girl, boy, male, female, lady, gal, gentleman	Person, individual, applicant (M/F)
Middleman	Agent, importer
Newsman	Reporter
Newspaper boy	Newspaper carrier
Nurse	Nurse (M/F)
Partsman	Partsworker
Phone girl	Phone canvasser
Policeman, policewoman	Policeofficer
Postman, mailman	Mail carrier, letter carrier
Pressman	Press operator, pressman (M/F)
Repairman, serviceman	Repair technician
Restaurant hostess	Diningroom service attendant
Salad girl	Saladmaker
Salesman, saleslady	Salesperson, sales representative, sales clerk
Sheet metal man	Sheet metal worker
Showman	Performer
Spokesman	Spokesperson, representative
Steward, stewardess	Flight attendant
Switchman	Switcher, switchman (M/F)
Tailor, seamstress	Tailor/seamstress
Tradesman	Technician skilled worker
Usher, usherette	Usher/usherette
Workman	Worker

Source: Reproduced from Employment Law Report, September, 1982, p. 72.

Job Referral: It is discriminatory for an employment agency to honour discriminatory job specification from employers, according to a settlement accepted by the Canadian Human Rights Commission against an employment agency in Halifax. In this case, the agency had failed to refer a fully-trained woman to a job vacancy for orderly because the employer had specified it wanted a man.

English Language Proficiency: Proficiency in English is not a bona fide qualification for entry level jobs, according to a ruling by a board of inquiry in Bhupinder Singh Dhaliwal v. B.C. Timber Ltd., 1983.

Request for a Photo: It may be discriminatory to request a photograph to accompany an application for employment because it may be used to discriminate against an applicant on prohibited grounds such as race, colour, nationality, sex etc. In this case a small-town newspaper carried a help-wanted advertisement for a bank which asked that a recent photograph be submitted with a resume. The Canadian Human Rights Commission obtained a settlement from the bank to distribute the Commission's Recruitment and Interviewing Guide to all its branches.[38]

Application form: It is discriminatory to ask applicants to complete an application form which asks the applicant's place of birth as well as the place of birth of his spouse. This was the decision of a B.C. board of inquiry in the case of A.A.A. Rentagard Canada Ltd. (April, 1979); the board held that the company's requirement that all applicants for employment as security guards provide this information was contrary to section 7(b) of the B.C. Human Rights Code.

In 1983, the Manitoba Human Rights Commission reached a settlement with a Winnipeg company in which the company agreed to discontinue the practice of asking about an applicant's age and martial status prior to hiring. The settlement came about as a result of a complaint from a male applicant that the employer required applicants for a warehouse helper's position to provide information pertaining to marital status and age prior to hiring.[39]

In a similar case, an Alberta company agreed to revise its application forms to discontinue the practice of screening applicants on the basis of height, weight and vision. A male applicant had complained to the Alberta Human Rights Commission that these requirements had nothing to do with the job of an operator. The Commission substantiated the complaint and the employer agreed to drop them.[40]

Physical Requirements: Height and weight requirements for a police constable's job in the Ottawa Police force (1979), weight requirement for a labouring job in Sechelt Building Supplies, (1971) Ltd., in B.C. (1979) and height requirement for an entry level labouring job in a sawmill, B.C. Forest Products Ltd. (1979) were declared illegal by boards of inquiry in Ontario and B.C. These requirements were held to have an adverse impact on females as a group. In the B.C. Forest Products Ltd. case, the B.C. Supreme Court upheld the decision of the board of inquiry. The Canadian Human Rights Commission reports that the C.N.R. and the Greyhound Lines of Canada have agreed to abolish height requirements for the job of a trainman and for the job as a bus driver respectively; in both cases, a woman had complained

to the Commission that height requirements discriminated against females.41 The RCMP modified its height and weight requirements after an Oriental complained to the CHRC42. Similarly, the Winnipeg Fire Department recently (1982) rescinded the policy regarding height and weight requirements. Several Winnipeg men had filed a complaint with the Manitoba Human Rights Commission alleging discrimination in this regard. The fire department applied the policy only to new recruits; there were a number of firefighters employed who were satisfactorily performing their duties even though they did not meet the height and weight standards of the Department.43

Misconceptions and Stereotypes Regarding Male and Females Jobs: Several boards of inquiry have held that stereotypes and misconceptions held by employers about male and female jobs have no bearing upon ability to perform the job. In Stairs v. Maritime Cooperative Services Ltd. 1975 in New Brunswick, Mrs. Stairs had applied for a position as a Cost Accountant Trainee. She was told by the interviewer that she would lose her "feminity" if hired. In a second interview she was told that "I was the best qualified for the job but he could not see having a woman in his department. In Francis Perry v. Robert Simpsons Ltd. in 1976 in Nova Scotia, Mr. Perry applied for the position of a copywriter with the company. When visiting the employment office at the company to apply for the position he was told it would be a waste of his time since the company only hired women for the position. Subsequently, a woman was offered the job. In Betty-Ann Shack v. London Drive-Ur-Self Ltd. in 1974 in Ontario, the rental truck agency refused to hire an inexperienced woman as a rental clerk because the employer thought the work "too arduous" for a woman, and that she would occasionally be alone in the office at night. The chairman of the board held that "this is merely one of the 'stereotyped' characterizations of the sexes ... this factor would have no bearing whatsoever upon her ability to perform the job in question".

Similarly, women cannot be denied a job because of heavy duty janitorial work according to an order of a B.C. board of inquiry. In two private settlements, the Canadian Human Rights Commission has decided that women cannot be refused work because of night work or shift work.44

Job Interviews: In Kerry Segrave v. Zeller's Ltd., 1975 the complainant alleged that he was refused employment and refused training because of his sex and marital status by Zellers Ltd. The applicant arranged for an interview with Zellers in response to an advertisement in the Hamilton Spectator for personnel manager trainees and credit management trainees positions. He was interviewed by a female personnel manager trainee who told him that there were only women in the position of personnel management trainees in the Zellers Company and that the wage scale was too low for the complainant to consider. She also told him that they did not hire men because women would not go to them with their problems. The applicant then expressed interest

in the credit manager trainee position. He was given a preliminary interview for the position, but was not processed further because of "undesirable" marital status. He had been divorced three months ago and Zellers took this as "a sign of instability in his background which could cross over into his business life as well". The board of inquiry found that Zellers had discriminated against Segrave on both sex as well as marital status grounds and ordered the company to direct its personnel managers that in all hiring practices men and women should be treated equally, and that all references to marital status in the selection process be deleted.

Bona-fide Occupational Qualification (BFOQ): All jurisdictions have a "bona-fide" occupational qualification exemption in respect of sex discrimination in employment. This exemption has generally been narrowly construed. The burden of proof in seeking to declare the existence of a BFOQ rests with the employer in all jurisdictions except New Brunswick.

On February 9, 1982 the Supreme Court of Canada in a unanimous award established a subjective and an objective standard for a BFOQ. First, the Supreme Court declared, a BFOQ must be imposed honestly, in good faith, and in the sincerely held belief that such limitation is imposed in the interests of the adequate performance of the work involved with all reasonable dispatch, safety and economy and not for ulterior or extraneous reasons aimed at objectives which could defeat the purpose of the code.

Second, in addition, the Court held, it must be related in an objective sense to the performance of the employment concerned, in that it is reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his fellow employees and the general public.

This judgement was rendered in the Borough of Etobicoke and the Ontario Human Rights Commission and Dunlop, Hall, Gray.

The issue under appeal was whether the Borough discriminated against firefighters Hall and Gray in imposing mandatory retirement at age 60. The Court found that while the requirement was honestly imposed, there was not sufficient evidence that it was objectively based.

As noted above, in Shack v. London Drive-Ur-Self Ltd. in 1974 the employer had claimed that a truck rental clerk's position was too strenuous for a woman and that she would occasionally be alone in the office at night. The board held that neither of these considerations constituted a bona fide occupational qualification. Similarly, in the Via Rail case, 1980, the tribunal held that Via's acuity standards were not based on a bona fide occupational requirement since Via had failed to justify the standards.

Several other boards of inquiry have also held that a defense based on BFOQ because of sex will probably only be successful where there is convincing evidence that considerations of public decency eliminate one sex from consideration as in Lindsay v. Provincial Protection and Security Agency Ltd., 1975 in Saskatchewan.

However, other considerations such as (1) an employer's customer preference for service from one or the other sex which might result in economic loss for the employer if that preference is not catered to; (2) a desire to create a particular restaurant atmosphere by having all-female waitresses; or (3) the fact that work site is remote and male dominated; or (4) a lack of female washroom facilities in a plant, are all insufficient grounds for claiming an exemption on the basis of BFOQ.

Post-Employment Discrimination: Discrimination could occur inside an organization affecting employees in such matters as layoffs, promotion, demotion, seniority, and other terms and conditions of employment such as name-calling and racial slurs. This is true of both unionized and non-unionized organizations. In unionized companies, minority group workers and women may be denied promotion by restrictive promotion criteria, by restricting them to the lower paying job classification and mobility clusters as well as discriminatory seniority systems.

Collective Bargaining Agreements and Human Rights Legislation: In the Borough of Etobicoke case above, the Supreme Court of Canada has held that requirements agreed upon in collective agreements are not binding where they violate the human rights legislation. The Court argued that the legislation was enacted for the benefit of the community at large and of its individual members and may not be waived or varied by private contract.

Treatment during employment (name-calling and racial slurs) and dismissal by race. In F.W. Woolworth Company Ltd. v. Dhillon (1982), an Ontario board of inquiry decided that providing a proper working environment was a condition of employment. Dhillon, who had worked for 2 years as a warehouseman for the company was of East Indian ancestry. He was subjected to racial insults and was subsequently dismissed. While management was aware of racial tension in the warehouse, they were ineffective or indifferent to the situation. The board ordered the company to stop the incident of verbal harassment at its warehouse, compensate Dhillon in the amount of $1,000 as general damages for insult to his dignity and form an ad hoc committee consisting of equal numbers from management, the East Indian employees and the Non-East Indian employees, together with an ex-officio member appointed by the OHRC.

In the case of Dr. M.A. Rajput v. Dr. Donald Watkins and Algoma University College and its Agents, 1976 an Ontario board of inquiry found that Dr. Rajput was not offered re-employment on the basis of "nationality" or "place of origin".

The complainant was awarded approximately $16,675.00 for one-half of the salary he would have received for the academic year 1975-1976, and $1,951.26 as compensation for expenses. He was also entitled to receive another year's salary for 1976-1977 if he failed to get a job either at Algoma University College or elsewhere.

In another case, Export Plastics Co. Ltd. v. Williams, (1981) Ms. Williams, a black Canadian woman of Jamaican origin, complained that she had been demoted and therefore discriminated against by the company due to her race, colour, nationality, ancestry and place of origin. She had obtained sick leave without pay from her superiors. When she returned to her employment, her supervisory position had been filled. She alleged that she was offered a lower position with lower pay and was told to either accept it or quit. A board of inquiry found that the complainant by being demoted was in effect dismissed and the company failed to give any valid reasons for this action. The board concluded that Ms. Williams' dismissal was discriminatory and ordered the company to compensate the complainant $3,000 in lost pay and $300 in damages for insult to her dignity.

Layoffs: In Mears et al. and Ontario Hydro, a board of inquiry decided that discrimination against blacks was an aspect of assessment of the four complainants at the time of the layoffs by Ontario Hydro's foremen, even though the layoff of 23 employees was motivated by financial circumstances. This was because the foreman's previous actions towards these four employees indicated a discriminatory attitude towards black persons. Evidence indicated that the foremen kept no written records about the productivity or quality of work of their crew members, and did not use objective, standardized criteria to assess their members on a day-to-day basis.

The board also concluded that Ontario Hydro was directly responsible for the discrimination against the complainants since the company "must assume responsibility for the actions of its foremen... because of both the authority it vested in these employees and the ineffective personnel policies that were in force at South Pickering".[45]

Seniority: An Ontario board of arbitration has decided that the segregated 'male' and 'female' seniority lists to recall employees from layoffs into historically sex segregated jobs was in violation of the Human Rights Code. In International Association of Machinists and Aerospace Workers, Local 2446 v. Brass Craft Canada, Ltd. (1984), the board of arbitration found that even though the company's practice of using sex-segregated lists was previously known and tacitly agreed to by the union and therefore had the status of a contractual term, it was nevertheless unenforceable because it was contrary to public policy as expressed in the Code.[46]

Promotion: An Ontario board of inquiry found in G. Almeida v. Chubb Fire Security Division (1984) that the

company discriminated against Almeida in employment on the basis of race, colour, nationality, ancestry or place of origin, when it failed to promote him on four separate occasions, but that it did not discriminate against him when it ultimately terminated his employment. In this case, the complainant was employed by the company as Assistant Controller from June, 1973 to May, 1979. Four new controllers of white or Caucasian ancestry were appointed during this period, despite the company's usual policy of promoting from within where possible. After the fourth appointment, the complainant's attitude became negative and uncooperative and his work performance deteriorated.

Promotion and dismissal of Casual Employees by Gender: At least three boards of inquiry in Saskatchewan, New Brunswick, and Ontario have dealt with women's complaints regarding their attempt to switch from part-time to full-time permanent jobs with the same employer. In all three cases, the boards of inquiry held against the employers for their refusal to continue to employ them. In Saskatchewan, Gail Oliver was hired as casual help as a maintenance worker. When she applied for a permanent position with her employer, the Department of Highways and Transportation, the department "figured she could not handle the job".

The Human Rights Commission Inquiry ruled in her favour and ordered the employer to give her an opportunity to apply as soon as the position became available; the employer was also required to inform the commission when any maintenance position became available.

In a New Brunswick board of inquiry Mrs. Shirley C. Naugler v. The New Brunswick Liquor Corporation, 1976 the complainant alleged that she was discriminated against in her effort to qualify for continuous service for the purpose of gaining seniority status. The complainant alleged that during the first 14 weeks of employment she worked only 10 hours and requested 3½ more hours so as to qualify for continuous service. For the next week she was given no hours and terminated. The board ruled in her favour and ordered the employer to pay her for loss of employment; to reinstate her within a week; to write a letter of assurance that it will comply with the code; to post the Preamble of the code; and to implement a program to eliminate its discriminatory work assignment practices.

In a similar case involving the Ontario Liquor Control Board, Betty J. Hendry v. The L.C.B.O. in 1980, Mrs. Hendry was dismissed when she wanted to switch from part-time to full-time work. The board found that the employer had discriminated against her because of her sex. According to the board of inquiry "one of the material causes was that the complainant was a woman in a long-time male preserve..." and that a stereotype of a typical LCBO male clerk remains "... not through any institutional opposition by the LCBO nor by any conscious desire to discriminate but merely by perpetuating the existing system". Mrs. Hendry was awarded a total of $10,266.44 for lost wages,

general compensation for loss of opportunity and emotional suffering. In addition the LCBO was ordered to send her a letter of apology; to post human rights brochures throughout all their businesses in Ontario; to mount a program to reduce the imbalance between men and women employed by the company and allow the Ontario Human Rights Commission to monitor the employment practices of the employer for one year by having the employer supply relevant information and statistics.

Sexual harassment: It has become an important issue in recent years. Human Rights Commissions across Canada have reported an increase in the number of complaints on this group. Numerous boards of inquiry have also ruled on this issue. Beginning with the precedent setting case, Ann Korchzak and Cherie Bell v. Ernest Lada and the Flaming Steak House Tavern Inc., 1980, boards of inquiry across Canada have consistently ruled against sexual harassment.

In the Ann Korchzak et al. case, the Board chairman Owen Shime declared that "...there is no reason why the law, which reaches into the work place so as to protect the work environment from physical or chemical pollution or extremes of temperature, ought not to protect employees from negative, psychological and mental effects where adverse gender-directed conduct emanating from a management hierarchy may reasonably be construed to be a condition of employment." In 1983 in Kotyk and Allary v. Canadian Employment and Immigration Commission and Chuba case,47 the tribunal chairman found that one of the employer's managers had engaged in sexual harassment on a consistent and deliberate basis for a period of months and that the effect of this conduct had been to "poison" the work environment. The Chairman ruled that an employer's failure to: (a) recognize that sexual harassment is prohibited conduct, (b) deal with complaints as serious matters, (c) advise their employees that sexual harassment that affects the employment relationship is improper, (d) establish mechanisms and to make both supervisors and employees aware of the significance and consequences of sexual harassment, will lead to direct liability attaching to the employer. This is what happened in this case. In another case, Olarte v. Commodore Business Machines Ltd. and DeFilippes, 1983, an Ontario board of inquiry also considered the issue of employer liability.48 In this case, the board found that the foreman had been guilty of sexual harassment. It ruled that while the employer could not be held vicariously liable for the foreman's conduct, it could be held personally liable to the complainants. This is because the foreman had managerial authority and therefore his acts of sexual harassment became those of the corporation. Moreover, all of the acts complained of occurred in the course of carrying on employer's business. This decision has been recently upheld by an Ontario court.

Trade Unions and Employment Discrimination: Trade unions cannot discriminate against minority members of a bargaining unit, according to labour relations statutes in several

provinces. For example, it is illegal for a union to (a) enter into an agreement with an employer which would impose restrictions on hiring minority workers; (b) require a person to be a Canadian citizen in its constitution; and (c) stipulate a discriminatory clause in its collective agreement, according to several decisions rendered by pertinent labour relations boards in Canada.49

Remedies: In most cases that went before a board of inquiry, in which discrimination was found, more than one remedy was ordered. The most frequent remedy was compensation for lost wages. The other remedies in order of frequency were an order to employers to (a) display the relevant human rights code in predominant places in employer premises, (b) stop their unlawful conduct, (c) compensate for general damages, (d) compensate for expenses incurred by the complainant, (e) compensate for pain and humiliation suffered by the complainant, (f) reinstate the complainant, (g) write a letter of apology to the complainant, (h) offer employment or opportunity for employment or interview etc. at the next available job opening, (i) allow the relevant human rights commission to conduct human rights workshop for company executives, (j) amend application forms and/or other selection tools, (k) write a letter of apology to the relevant human rights commission, and (l) to provide separate facilities for women.50

Affirmative Action: One of the important features of most of the Canadian Human Rights statutes is their provision of special programs known as affirmative-action programs. The rationale for such programs is that because of the effects of pre- and post-employment job barriers discussed above, the minority groups have not had and do not currently have the opportunity to obtain training and experience in order to qualify for better jobs. Affirmative action programs are designed to correct the consequences of past and continuing discrimination.

Affirmative action is a deliberate, structured approach to improving work opportunities for minority groups and women. This approach involves a series of positive steps undertaken by employers to remove barriers to employment and achieve measurable improvement in recruiting, hiring, training, and promoting qualified worker groups who have in the past been denied access to certain jobs.51

Voluntary affirmative programs are legal in 10 jurisdictions - nine provinces and at the federal level. In Alberta, the cabinet can approve such a program. Such programs are also legal under Section 15(2) of the Canadian Charter of Rights and Freedoms to come into force in April 1985. In Saskatchewan and at the federal levels, boards of inquiry can order affirmative action programs, if discrimination is found.

A tribunal under the CHRA has recently (August 22, 1984) ordered the Canadian National Railways to undertake a mandatory affirmative action program. The tribunal, after three

years of hearings and deliberations, found that the company had discriminated against women in its hiring practices in the St. Lawrence region. In a landmark decision, the tribunal has ruled that the company is required to hire women for one in four non-traditional (blue collar) jobs in the region until they hold 13 percent of such jobs. The CN is also required to implement a series of other measures, ranging from abandoning certain mechanical aptitude tests to modifying the way it publicizes available jobs.

It is an important decision in several respects. It arose from a complaint laid against CN in 1979 by a Montreal Women's lobby group, Action Travail des Femmes. It is the first time that goals have been specified; the goal of 13 percent roughly corresponds to the proportion of women in blue-collar work in industry generally.[52]

The CN has decided to appeal the tribunal ruling to the Federal Court of Appeal.

Affirmative action programs have also been ordered by boards of inquiry in other jurisdictions in previous years. For instance, in 1980 in Betty Hendry v. Liquor Control Board of Ontario (LCBO) a similar program was ordered by an Ontario board in a ruling against the LCBO. However, no goals were specified. The LCBO was required to collaborate with the provincial women's bureau to design a program which would reduce imbalance in employment opportunities for women. In Shirley Naugler v. The New Brunswick Liquor Corporation in 1976, the New Brunswick board's order on affirmative action was appealed to the New Brunswick Supreme Court where it was not upheld. The Hendry ruling was not appealed by the LCBO.[53]

The Saskatchewan Human Rights Commission has published a proposed set of regulations. It has employed these regulations in approving 16 affirmative action plans. The regulations entail: (1) a systematic analysis of an employer's current workforce, (2) a comparison of the make-up of that workforce with that of the larger surrounding community, (3) establishment of management policies which will move in the direction of overcoming those imbalances which have been identified, within a certain time frame, and (4) a monitoring system to ensure that goals and timetables are being adhered to. In Quebec a 1978 statute legislated affirmative-action for the handicapped in the area of education, employment, accessibility, transportation and telecommunications; this statute requires that employers of over 50 persons file plans with the government showing how, over a reasonable period of time, they will alter buildings and facilities to accommodate the handicapped and incorporate handicapped persons into their employment systems. This legislation, while limited to the disabled, is one of the most extensive mandatory affirmative action" in any jurisdiction in Canada.[54]

Voluntary affirmative action programs have been adopted by some business organizations at the federal level, in Nova Scotia, Saskatchewan and Ontario. However, a majority of organizations in Canada do not have such programs. The existing programs have resulted in very limited progress for minorities and women. It is also true of affirmative action programs in the federal and the Ontario Public Service.

Mandatory Affirmative Action or Contract Compliance Programs: Under these programs, private contractors are required to have mandatory affirmative action programs as a condition of doing business with a government agency. This involves the setting of goals and timetables for minority employment in job categories where such minorities have been under-utilized in proportion to their representation in the labour force. Failure to develop and implement numerical goals which are significant, measurable, attainable and specific could result in the cancellation or termination of existing contracts, and disbarment from competing for further government contracts.

A provision for mandatory compliance program exists in the federal Oil and Gas Production and Conservation Act of March 1982. Similarly, large resource developers such as Amok and Eldorado Nuclear in Saskatchewan and Syncrude in Alberta and the James Bay Project in Quebec have also recruited, employed and trained native people as part of contract compliance programs.[55]

Equal Rights under the Canadian Charter: The Canadian Charter of Rights and Freedoms (1982) contains an equal rights provision (Section 15) specifically directed against discrimination based on race, national or ethnic origin, colour, religion, sex, age and mental or physical handicap. This provision becomes operative in April 1985.

As stated earlier, The Charter also under sub-section 15(2) provides for affirmative action programs.

References

1. Report of the World Social Situation, New York: United Nations, 1982, p. 201-210.

2. Remarks by Mark MacGuigan, Minister of Justice and Attorney-General of Canada to the Canadian Caucus on Human Rights, Ottawa, December 8, 1983.

3. Ibid.

4. Ibid.

5. Ibid.

6. Kalmen Kaplansky, Canada and the International Labour Organization, Ottawa, Labour Canada, 1980, p. 3.

7. Yves Beigbeder, "The United States withdrawal from the International Labour Organization," Relations Industrielles, Vol. 34, 1979, 223-240.

8. David Tajgman, "Political resolutions in the International Labour Organization," Relations Industrielles, Vol. 36, 1981, 499-529.

9. 1983 Annual Review: Labour Canada, Ottawa: Labour Canada, 1983, 47.

10. J. A. Coates, "British employers and the ILO", Employment Gazette, May 1981, 215-219.

11. Glyn Lloyd, "What do we expect from the ILO," Employment Gazette, August 1982, 351-353.

12. Freedom of Association and Collective Bargaining: General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Geneva: International Labour Organization, 1983, pages 7-8.

    Also see, Outline of the existing procedure for the examination of complaints alleging infringement of trade union rights, Geneva, ILO, May 1982. This document was provided to the author by Mr. Simpson, chief, Freedom of Association Branch of the ILO during my recent (June 1984) visit to the ILO.

13. Joseph Magnet, "Wage restraints reflect contempt for human rights", Globe and Mail, March 4, 1983, 7.

14. Memorandum: Ontario Supreme Court Decision Re Ontario Control Program, Toronto: Sack, Charney, Goldblatt and Mitchell, October 27, 1983.

15. Two-Hundred and Thirty-Fourth Report of the Committee on Freedom of Association, Geneva: International Labour Office, GB. 226/5/18, 226th Session, 31 May - June 2, 1984.

16. Ibid.

17. Ibid.

18. Ibid.

19. "Fighting Bill 59 at the United Nations", The Communicator, February, 1984, 2. Also see, Two-Hundred and Thirty-Third Report of the Committee on Freedom of Association, Geneva: International Labour Office, GB. 225/9/9, 225th Session, 25 February - March 3, 1984, 1.

20. The Globe and Mail, Nov. 17, 1984, page 11.

21. Memorandum, op.cit.

22. Harish C. Jain, "Discrimination in the workplace," in Kalburgi M. Srinivas, (editor), Human Resource Management: Contemporary Perspectives in Canada, Toronto: McGraw-Hill Ryerson, 1984.

23. Equal Pay Casebook: 1978-1984, Texts of Canadian Human Rights Commission news releases and excerpts from the Commission's Summary of Decisions, reporting equal pay for work of equal value, Ottawa: CHRC, August, 1984.

24. John Campbell, "Equal pay for work of equal value in the Federal Public Service", a paper presented at the Canadian Industrial Relations Association annual conference, Guelph University, May, 1984.

25. Equal Pay Casebook, op. cit.

26. Ibid.

27. Ibid.

28. Ibid.

29. Alberte Ledoyen, Communication presentee Au Colloque, Perspectives on Equal Value, Parrainé par, Le Conseil Du Statut De La Femme De L'Ontario, Toronto, 3 - 4 February, 1984.

30. Ibid.

31. Ibid.

32. Equal Remuneration Convention, 1951: Report for the period July 1, 1981 to June 30, 1983 made by the Government of

Canada, in accordance with Article 22 of the Constitution of the International Labour Organization, Ottawa: Labour Canada, 1983.

33. Ibid.

34. Harish C. Jain, Employment and Pay Discrimination in Canada: Theories, Evidence and Policies, Hamilton: McMaster University Research and Working Paper No. 177, June, 1981.

35. Ibid.

36. Ibid.

37. La Commission des Droits de la Personne du Québec v. Oliva L'Homme, Canadian Human Rights Reporter, 1982, D/489.

38. Summary of decisions taken by the Canadian Human Rights Commission at its meetings of the 18th of December, 1979 and the 14th and 15th of January, 1980 (January 1980).

39. Annual Report, Manitoba Human Rights Commission, 1983, 29.

40. Annual Report, Alberta Human Rights Commission, April, 1981 to March 31, 1982, 10.

41. Summary of decisions taken by the Canadian Human Rights Commission, September, 1980, and November, 1980.

42. Canadian Human Rights Commission Annual Report 1982, 14.

43. Annual Report Manitoba Human Rights Commission, 1982, 21.

44. Harish C. Jain, Employment and Pay Discrimination, op. cit.

45. Annual Report, Ontario Human Rights Commission 1983 - 1984, 53-54.

46. Canadian Human Rights Reporter, Vol. 5, February - March, 1984.

47. Jane Kotyk and Barbara Allary v. Canadian Employment and Immigration Commission and Jack Chuba, 1983, Canadian Human Rights Reporter, Vol. 4, D/1416.

48. Edilma Olarte, Eneyda Mijia, Edilma Biljak, Maria Magnolia Estrada, Elvira Benel, and Yolanda Munoz v. Commodore Business Machines, October 11, 1983, obtained from the Ontario Human Rights Commission.

49. Harish C. Jain, Employment and Pay Discrimination, op. cit.

50. Ibid.

51. Ibid.

52. Margot Gibb-Clark, "CN ordered to hire more women in landmark human rights ruling," Globe and Mail, August 23, 1984, 1-2.

53. Harish C. Jain, Employment and Pay Discrimination, op. cit.

54. Ibid.

55. Harish C. Jain, Visible Minorities and Affirmative Action, Unpublished.

Part IV

The Role of Employers and Trade Unions

In this part, the role of employers and trade unions in eliminating discrimination and promoting equality of employment will be analyzed.

In part I, the barriers-to-entry and advancement within organizations were highlighted. In this part, implications of these barriers will be outlined.

As far as barriers-to-entry are concerned, employers may use sex or race as a cheap screen which may be discriminatory for certain members of minority groups who would turn out to be desirable employees if only they were offered a job. Similarly, excessive use of credentialism (job selection based on educational qualifications) may imply that hiring standards are set in excess of job requirements and minority workers are excluded from certain occupations to a disproportionate extent. Similar problems may arise with respect to employment tests and interviews in so far as they are not properly validated against actual job performance and with respect to channels of recruitment where they are sufficiently narrow to arbitrarily exclude minorities. Employers should also guard against the possibility that they hold misguided or stereotyped views of the relative performance or value of the various groups. For example, misconceptions may be important in relation to barriers to advancement, where there is no experience of minority workers being employed in senior positions. Married women in particular will be adversely affected through discontinuous work experience in obtaining job advancement, so that it is important to assess accurately the significance of experience for determining the actual performance of workers in particular jobs. Thus, entry and training requirements should be carefully established and maintained only if they are truly necessary employment or promotion pre-requisites.

Organizations should keep in mind that over the years, substantial validity evidence has accumulated for many of the predictors. Generally, in employment tests, ability tests and work sample tests -- relative to personality and interest tests -- have the most favourable validity evidence. References and recommendations, and interviews generally have been found to be less valid as predictors of job success. Choices of predictors to be used in staffing systems should be governed by the nature of the job, and the validity of the predictors. Staffing systems can be improved considerably by standardization, to obtain reliable information, and by the validation process.[1]

Communication Difficulties in the Workplace

An employer with a multiracial labour force will find it advantageous to develop an orientation, training and counselling program in general and a language training program for new and existing employees in particular. It will help improve workers' knowledge of job safety requirements and their job duties. Moreover, an orientation and training program for new employees and an increased competence in communicating in English will likely result in lower rates of absenteeism and lateness, decreased staff turnover, improved safety record, ease of job transfer, and the like.

Another aspect of communication is non-verbal communication. This means facial expressions, body posture, eye contact, gestures, and such things as hesitations in speech and the tone and volume of our voice. Each of these factors is culturally determined.

As Wolfgang has noted, people from Latin, Southern European or mid-Eastern countries are normally referred to as contact-oriented. That is, they stand close to one another while speaking, frequently touch the person they are talking to and may gesture for emphasis. In contrast, English-Canadians are considered to be 'non-contact-oriented'. "They keep people at arm's length while talking, normally do not touch the person they are talking to, except for a handshake, and normally do not gesture a lot with their hands while talking", according to Wolfgang.[2]

These differences may well affect the job situation. There may be instances when contact-oriented workers may offend non-contact-oriented workers and employers by standing too close, touching, and showing emotions through gesturing. Non-contact-oriented workers or employers may feel that such a person is crowding, pawing, and showing little self-control. As a result, they may move away or tell the person to keep his or her hands off. Or non-contact-oriented persons may say all this with their body language, e.g., move away or display anger or disinterest. The contact-oriented worker may not understand what is happening and may feel offended. Neither understands the other's culture or ways of communicating. They may start stereotyping each other. The English-Canadian worker or employer may stereotype the Latin, Middle Eastern or Southern European worker as being 'too loud', 'too pushy', 'too emotional', and the English-Canadian worker or employer could be stereotyped as being 'too distant', or 'like a cold fish' to talk to. In fact, these stereotypes do exist, as was found in one study when some new Canadians and native-born Canadians were interviewed.[3]

There are benefits to both the worker and the employer in attempts to avoid mis-communication and stereotyping. As Wolfgang points out, "With less stress in the work situation there would be less chance for mis-communication and therefore a greater chance for more productivity, more profits, higher

morale, better wages and more opportunity for promotions. Both the employer and the worker would win."[4]

Similarly, in job interviews, as noted in Part I, studies have found that job applicants are more likely to be hired if they look straight ahead rather than down. People who look the interviewer straight in the eye are rated as being confident, responsible and having more initiative. Similarly, applicants who demonstrate greater amounts of eye contact, head moving, smiling and other non-verbal behaviours are rated higher than applicants who do not.5

In one study, it was shown that females are generally given lower evaluations than males, even when these candidates have similar or identical qualifications. In addition, evidence supports the notion that females are given lower ratings for jobs typically "masculine" in nature, whereas males are given lower ratings for typically "female" jobs,6 as noted earlier.

It would therefore, seem sensible for employers to develop clear equal opportunities policies in order to ensure that they are not discriminating by default of appropriate action and to give themselves some safeguard in the event of their policies being challenged. For instance, organizations must issue clear instructions regarding the employment interview through their personnel departments. Interviews should be structured as much as possible, and only questions of direct relevance to the job should be asked.

Employers should introduce job orientation, training, counselling and language training, undertake voluntary affirmative-action programs, provide for religious accommodation for minorities, require job-related hiring standards and eliminate post-employment discriminatory policies relating to promotions, training, pay and job transfer, layoffs, recalls and terminations and the like.

The Role of Trade Unions in promoting equal employment for minorities and women: The labour movement continues to be one of the most potent forces in the campaign for effective human rights legislation in Canada. In 1935 the Jewish Labour Committee and the Canadian labour movement initiated both legislative and educational attacks on discrimination. The National Committee on Human Rights of the Canadian Labour Congress (CLC), for instance, set out the rationale for labour's concern with human rights: "Discrimination and prejudice split the union; they are a threat to unity. Discrimination and prejudice are in direct conflit with the underlying principles of the labour movement - which are brotherhood and equality. When some citizens are deprived of their rights, everyone's rights are threatened."

Similarly, the CLC passed an important Equal Employment Opportunity (EEO) resolution in 1980. The Ontario Federation of Labour's anti-racism campaign throughout Ontario in 1982, was in keeping with this tradition. In recent years unions such as

PSAC, CUPW, NUPGE and OPSEU have made impressive gains for minorities and women in the workplace. Recently, CLC Constitution was amended at the 1984 Convention and six positions were designated for women as Vice-President at large to ensure a proportional representation of women at the top. With the other women officers, the new Vice-Presidents brought the total of female executive council officers to ten.7

However, in Canada and in the U.S.A. both women and minorities are severely under-represented in leadership roles. Despite membership increases, women in general continue to play only a minor role in union governance, particularly at the national, regional and federation levels. Unfortunately, the Statistics Canada's CALURA reports and Labour Canada's Directory of Labour Organizations in Canada do not report data on ethnic minorities. From 1970 to 1981 women constituted only 9 to 17 percent of the executive board members of unions, even though they constituted 31 percent of all union membership.8 Obviously, any growth in female union membership would have to be accompanied by an increased role in running the unions; otherwise, it is unlikely that they would share in the benefits of unionization. The same is true for other minorities, even though no hard data is available on the extent of their executive board membership.

For several reasons, it is very important that minorities and women achieve a large share of union officer positions. The new frontiers of union growth will be found in service, finance and trade, that is, professional and white-collar sectors, where there are large numbers of women and minorities. The appeal of unions to unorganized minorities and female employees would be greatly enhanced, if they saw that these unions had minority and female officers, that they could participate in decision-making and that attention in bargaining would be directed towards issues of importance to them.9 Such issues include language training, accommodation of religious holidays, equal pay for work of equal value and paid maternity leave, etc. Moreover, a core of minority and female officers could be a major force in designing and pressing for legislation (such as mandatory affirmative action, including data collection for minority work force), which would help all minorities and women, both unionized and non-unionized. Finally, a large number of minority and female officers could also serve to increase majority white male union officers' awareness of the problems of racial and ethnic groups and the role of unions in resolving them.

What about anti-discrimination and collective bargaining policies of trade unions? A study (1981) for the Canadian Human Rights Commission indicated that of the 77 unions with agreements covering employees under the federal jurisdiction, only 26 or 33 percent had some form of anti-discrimination clause in their constitutions; 14 of these were international unions and 12 national. This is not to suggest that all other unions discriminated.10

The study also revealed that of the 72 collective agreements examined, only 18, or 25 percent, had specific anti-discrimination provisions.11

Every contract should contain a non-discrimination clause. It can be used not only to re-inforce existing human rights legislation, but also to provide increased protection. For instance, a provision negotiated by the OPSEU and Legal Services Society (Ottawa-Carleton) states: "The employer and the union agree that there shall be no discrimination against any employee because of their race, creed, colour, sex, age, sexual orientation, marital status, including common-law relationships, nationality, ancestry, place of origin, or political affiliation, or whether he/she has children or physical hardships."

It is better to list the prohibited grounds for discrimination in the contract rather than to negotiate a non-discrimination clause with specific reference to the legislation. This allows the union to go beyond the enumerated prohibited grounds in the pertinent legislation.

A specific non-discrimination provision has other advantages as well. It allows violations of human rights to be pursued through the grievance procedure, which is often cheaper and faster than the legal process. Moreover, use of the grievance procedure does not preclude the use of the legal route if the outcome is unsatisfactory.12

Local, national and international unions have a dual role as employers and as representative of workers. In their role as employer, unions have the responsibilities and same role to play as other employers discussed above. As representatives of workers, they should:

(1) Establish procedures to increase the representation of minorities and women in union leadership positions. Without greater representation of minorities and women at the executive level, race, national origin, and sex discrimination by an employer may continue largely unchallenged.

(2) Establish a compliance programme designed to uncover discriminatory provisions in the collective agreements, and discriminatory practices not covered by the agreements. Collective agreements should be specifically reviewed for provisions requiring the use of selection procedures that can adversely affect employment opportunities for women and minorities, such as education and weight and height restrictions that are unrelated to successful job performance.

(3) Remove discriminatory provisions and negotiate minority-oriented clauses. In these times of wage controls in the public sector and concession bargaining in the private sector, there is a discernable trend towards widened

information sharing, company-wide quality of life and joint productivity committees, and profit-sharing arrangements (as in the case of GM and Ford; Canada Post boasts of having two union leaders on its 11 member board of directors). It might be possible to remove from agreements provisions which unions believe to be discriminatory and negotiate for provisions of interest to minorities, such as accommodation of religious holidays, affirmative action programmes, day care services, etc.

(4) Recruit minority group members into union membership through contact with their community leaders, organizations and educational institutions. The OFL campaign against racism provides a good model for all unions to emulate in order to contact and reach minority groups. What is needed is active recruitment. Operation of hiring halls in the case of construction and other craft unions needs to be non-discriminatory as well.

(5) Monitor and be alert to discriminatory practices used in the selection of employees for promotion, transfer and training, and initiate collective bargaining to have such practices cease.

(6) Work with employers to establish and implement voluntary affirmative action plans and seek to include such plans in collective agreements. This will allow unions to establish both an institutional and information base, to secure non-discriminatory employee policies toward their bargaining unit members. For instance, the unions will have data on the race, sex, and national origin of bargaining unit members by job, department or wage level.

(7) Provide training and information to union officers on their responsibilities for human rights in employment. This training and information should be integrated into all education and training programs of local, national and international unions. It should include: (i) the pertinent human rights code and the nature and causes of discrimination; (ii) the background of racial minority groups and communication needs; (iii) equal opportunity and affirmative action policies; (iv) avoiding discrimination when representing members; (v) ensuring that members are informed of their role in the union, and of industrial relations and union procedures and structures through translation of material and by participation in industrial relations courses; (vi) purchasing and utilizing the courses prepared by the CLC on equality of women.

(8) Broaden the seniority base, (from unit to department and department to plant), allowing access to a wide range of jobs in the hierarchy to assist women and minorities to move out of job ghettos.

(9) Negotiate paid parental leave with accumulation of seniority during leave.

(10) Negotiate paid educational leave (PEL) so that women and minorities can take PEL at least in proportion to their numbers in the bargaining unit.

(11) Seek consensus among members and negotiate layoffs of minorities and women in proportion to their numbers in the bargaining unit. In addition, seek other creative solutions such as reverse seniority etc. to deal with the disproportionate impact of layoffs on women and minorities.

(12) Negotiate job protection and retaining of minorities and women for alternative employment in the event of technological change.

These policies and initiatives by trade unions can go a long way towards creating equality of opportunities for minorities and women. There is evidence that trade unions can be an effective device for raising the wages of both males and females and narrowing wage differentials. Consequently, the encouragement of the unionization of the minority workforce can be important device to raise the wages of low-wage groups and to reduce the gender earnings gap and between the races as well. It will help reduce job segregation.[13]

Footnotes

1. H. Heneman, D. Schwab, J. Possum and L. Dyer, Personnel/ Human Resource Management, Homewood, III.: Richard D. Irwin, 1980.

2. Aaron Wolfgang, "The importance of non-verbal communication," in A Resource Book on Racial and Ethnic Minorities in the Workplace, editors, T. Rees and L. Huszynski, Toronto: Social Planning Council of Metropolitan Toronto, 1982.

3. Ibid.

4. Ibid.

5. M.T. McGovern and H.E.A. Tinsley, "Interviewer evaluations of interviewee non-verbal behaviour", Journal of Vocational Behaviour, 13, 1978, 163-171. Also see, J.G. Hollandsworth Jr. et al., "Relative contributions of verbal, articulative, and non verbal communication to employment decisions in the job interview setting," Personnel Psychology 32, 1979, 350-365.

6. Richard D. Arvey, Fairness in Selecting Employees, Reading, Mass.: Addison-Wesley, 1979.

7. Carol Aitken, "The spirit of affirmative action," and "Election of officers," Canadian Labour, June-July 1984.

8. Based on Statistics Canada reports Corporations and Labour Unions Returns Act Reports, Part II.

9. Harish C. Jain and Peter J. Sloane, Equal Employment Issues: Race and Sex Discrimination in the United States, Canada and Britain, New York: Praeger, 1981. Also see, P. Andiappan and G.N. Chaison, "The emerging role of women in the National Union Government: The results of a Canadian Study," Presented to the Sixth World Congress of the International Industrial Relations Association, March 1983.

10. J.K. Eaton, Collective Bargaining for Employees Within the Jurisdiction of the Canadian Human Rights Commission, Ottawa, Canadian Human Rights Commission, March 1981.

11. Ibid.

12. Harish C. Jain and Peter J. Sloane, op. cit.

13. Ibid.

Inquiries before hiring	Lawful	Unlawful
1. Name	Previous name under which applicant has been educated or employed	a) Inquiry into previous name for purposes other than education or employment. b) Maiden name.
2. Address	a) Present address and length of residence in the province or country. b) Previous addresses in Canada.	Inquiry into foreign addresses which may indicate national origin.
3. Age	a) May ascertain if applicant is under the age of majority, or if the applicant is 16 years or under in accordance with The Employment Standards Act. b) Inquiry as to age after a hiring decision is made, pertaining to employee benefit plans, income tax deductions, etc.	a) Request birth certificate or baptismal record or any other information regarding age. b) Inquiry as to whether applicant is over the age of retirement.
4. Sex	For purposes of addressing the applicant, an inquiry as to whether the applicant is "Mr., Miss, Mrs., Ms." will be acceptable, provided it is clearly designated as "optional".	a) Any inquiry as to sex on the application form. b) Different application forms for males and females, e.g. filed separately, color-coded, computer-coded, coded in any way.
5. Marital Status	a) For purposes of addressing the applicant, an inquiry as to whether the applicant is "Mr., Miss, Mrs, Ms." will be acceptable, provided it is clearly designated as "optional".	a) Inquiry as to whether applicant is single, married, remarried, engaged, divorced, separated, widowed, living common law.

MANITOBA (cont'd)

Inquiries before hiring	Lawful	Unlawful
5. Marital Status (cont'd)	b) "Are you willing and able to travel or be transferred to other areas of the province or country?"	b) Any inquiry as to applicant's spouse, e.g., "Is spouse subject to transfer?"
6. Family Status	"Are you willing and able to travel or be transferred to other areas of the province of country?"	a) Inquiry as to number of children or dependants. b) Inquiry as to child care arrangements. c) Inquiry as to whether applicant is pregnant, on birth control or has future childbearing plans.
7. Birthplace, Nationality, Ethnic or National Origin		a) Any inquiry as to birthplace. b) Applicant's nationality, or nationality of parents, grandparents, relatives, or spouse. c) Any other inquiry as to ethnic or national origin e.g. birth certificate, mother tongue.
8. Citizenship	"Are you legally entitled to work in Canada?"	Any inquiry into citizenship which would tend to divulge applicant's nationality, ethnic or national origin.
9. Military Service	Inquiry into Canadian military service.	Inquiry into all military service.
10. Languages	Inquiry into which languages applicant speaks, reads or writes.	a) Mother tongue. b) Where knowledge of language skills was obtained.

MANITOBA (cont'd)

Inquiries before hiring	Lawful	Unlawful
11. Race or Color		Any inquiry which would indicate race, color, or complexion, including color of eyes, hair or skin.
12. Photographs	May be required after hiring for identification purposes.	Request photograph.
13. Religion	a) Inquiry as to willingness to work shifts or required work schedule. b) Inquiry after hiring about religion to determine when leave of absence might be required for religious observances.	a) Any inquiry as to willingness or availability to work on a specific religious holiday. b) Any inquiry that may reveal religious denomination, affiliation or preference. c) Church attended, religious holidays, customs observed or religious dress. d) Request reference or recommendation from pastor, priest, minister, rabbi or other religious leader.
14. Political Belief		Any inquiry as to political belief, affiliation or preference.
15. Education	Inquiry into what academic, professional, vocational or technical schools attended, nature and level of education received.	
16. Previous Experience	Inquiry as to previous work experience.	
17. Physical Handicap	a) Inquiry as to whether applicant has any physical handicaps or health problems affecting the job(s) applied for.	Request that applicant list all physical handicaps or health problems. (This would tend to divulge handicaps or health conditions which are not

Inquiries before hiring	Lawful	Unlawful
	b) Inquiry as to any physical handicaps or health problems that applicant wishes to be taken into consideration when determining job placement. Note: While an inquiry into any physical handicaps or health problems affecting employment "generally", will not be considered unlawful, the alternatives suggested above are preferable. This is to discourage applicants from volunteering information on handicaps which may not be relevant to the jobs applied for and could possible be used to discriminate.	necessarily relevant to job performance.).
18. Medical Information	a) A medical form or examination by a physician may request information [illegible] prohibited that may be relevant in determining physical fitness for the job. e.g. sex, age, marital status, family status, etc. b) Statement by employer that offer may be contingent on passing a physical examination. Note: Any medical inquiries by a physician or employer pertaining to prohibited grounds may be made after a hiring decision.	a) it is unlawful for the employer to make prohibited inquiries in the context of soliciting medical information on an application form or during an interview. b) Any medical or health inquiry by an employer which may reveal applicant's sex, marital status, family status, or other prohibited grounds, e.g., Number of pregnancies; Date(s) of delivery; Method of birth control; Nature of menstrual periods; Number of dependants, etc.
19. Organizations	Inquiry into membership in any organization, with the qualification that applicant is not required to	Request that applicant list all clubs or organizations where membership is held.

MANITOBA (cont'd)

Inquiries before hiring	Lawful	Unlawful
	list any clubs or organizations that indicate race, religion, any color, sex, age, marital status, physical handicap, ethnic or national origin, political belief or family status.	
20. Relatives	Inquiry into name and address of person to be notified in case of emergency.	a) Inquiry into name and address of next of kin and his or her relationship, to be notified in case of emergency. (This could reveal marital status or family status.) b) Inquiry as to whether applicant has any relatives employed by the employer.
21. References	a) Request from references information pertinent to job performance, e.g. work experience, ability, character. b) Inquiry as to who referred applicant for a particular position.	Any inquiry from a reference which would reveal applicant's race, religion, color, sex, age, marital status, physical handicap, ethnic or national origin, political belief or family status.
22. Miscellaneous	a) Notice to applicant that the withholding or falsification of any information or material facts relevant to the position will be cause for rejection or dismissal. b) Request consent of applicant for Personal Investigation.	

NOVA SCOTIA

Subject	Lawful Pre- and Post-Employment Inquiries	Unlawful in Most Instances
Name	Name used in previous employment.	Inquiry into previous name where it has been changed by court order or otherwise, unless used in previous employment.
Address	Inquiry into place and length of current and previous addresses in Canada.	Inquiry into foreign addresses which would indicate national origin.
Sex	None.	Any inquiry.
Age	Request birth certificate after hiring.	1. Request birth certificate or baptismal record. 2. Any inquiry into place of birth of self, parents, grandparents or spouse. 3. Any other inquiry into national origin.
Race or Color	None.	Any inquiry.
Photograph	After hiring for identification purposes only.	Request photograph before hiring.
Religion or Creed	None.	1. Any inquiry to indicate or identify religious denomination or customs. 2. Request clergyman's recommendation or reference.

NOVA SCOTIA (cont'd)

Subject	Lawful Pre- and Post-Employment Inquiries	Unlawful in Most Instances
Citizenship	None.	1. Whether Canadian citizen or British subject. 2. If native born or naturalized. 3. Date citizenship received. 4. Proof of citizenship. 5. Inquiries into citizenship status which would tend to divulge applicant's national or ethnic origin.
Education	1. Inquiry into academic, professional or vocational schools attended. 2. Inquiry into language skills, such as reading and writing of official languages	1. Any inquiry into the nationality, racial or religious affiliation of schools. 2. Inquiry as to what is mother tongue or how foreign languages ability was acquired.
Relatives	After hiring, inquiry into name and address of person to be notified in case of emergency.	1. Names and address of closest relative. 2. Any inquiry about a relative which cannot be asked of an applicant.
Clubs and Organizations	Inquiry into organizational memberships with the qualification: "Do not list clubs or organizations of a religious, racial or national character".	1. Ask to list all clubs and organizations where membership is held. 2. Specific inquiry into clubs and organizations which would indicate, race, creed, color, sex, ethnic or national origin.

NOVA SCOTIA (cont'd)

Subject	Lawful Pre- and Post-Employment Inquiries	Unlawful in Most Instances
Work Schedule	1. Inquiry into willingness to work required work schedule. 2. After hiring, inquiry about religion to determine when leave-of-absence might be required for observance of religious holidays.	Any inquiry into willingness to work any particular religious holiday.
Military Service	Inquiry into Canadian military service.	Inquiry into all military service.
Physical Handicap	None.	Any inquiry.

Any inquiry is forbidden which, although not specifically listed above, is designed to elicit information as to race, religion, creed, color, sex, ethnic or national origin, physical handicap, marital status or age, if between 40 and 65 years.

ONTARIO

CATEGORY	QUESTIONS ON APPLICATION FORMS	QUESTIONS AT PERSONAL EMPLOYMENT INTERVIEWS
BIRTHPLACE, ANCESTRY, ETHNIC ORIGIN PLACE OF ORIGIN	APPROPRIATE: Nil (see footnotes 1 and 2) INAPPROPRIATE: Inquiries which would elicit information about these or related subjects.	APPROPRIATE: A special interest organization[2] serving people identified by a prohibited ground of discrimination may inquire about such status if having that status is a genuine and reasonable requirement for the job in question. (see also footnotes 1 and 2) INAPPROPRIATE: All other inquiries.
SEX, MARITAL STATUS, FAMILY STATUS	APPROPRIATE: Applicant may be asked about ability to travel or relocate if information is relevant to the job in question. Applicant may be asked to specify how he or she wishes to be addressed. (see footnotes 1 and 2) INAPPROPRIATE: Categories and inquiries as to: height and weight; married; divorced; common-law; single; separated; maiden or birth name; asking applicant to select one of Mr., Miss, Mrs. or Ms.; children or dependents; child care arrangements, child-bearing plans; pregnancy; birth control; information about spouse (e.g. is spouse subject/willing to transfer); second income; insurance beneficiaries; relationship of person to be notified in case of emergency.	APPROPRIATE: Inquiries about sex or marital status may be made only if sex or marital status is genuine and reasonable qualification for the particular job. An applicant may be asked his or her relationship to other employees if the employer has a nepotism or anti-nepotism policy regarding spouses, children or parents of the employer or an employee. (see also footnotes 1 and 2) INAPPROPRIATE: All other inquiries including those prohibited on application forms. NOTE: Inquiries about sex, marital status or dependents which are pertinent to an employee superannuation, pension or insurance plan may be made after hiring.

ONTARIO (cont'd)

CATEGORY	QUESTIONS ON APPLICATION FORMS	QUESTIONS AT PERSONAL EMPLOYMENT INTERVIEWS
AGE (18-65)	APPROPRIATE: "Are you between the ages of 18 and 65?" (see footnotes 1 and 2) INAPPROPRIATE: Inquiries about age, date of birth, or requests for birth or baptismal records.	APPROPRIATE: Inquiries about age may be made only if the age of the applicant is a genuine and reasonable qualification for the particular job. (see footnotes 1 and 2) INAPPROPRIATE: All other inquiries. NOTE: After hiring, the employee may be asked for proof of age, and inquiries may be made about age which are relevant to an employee superannuation, pension or insurance plan. Inquiries about age which are not related to the job or legitimate personnel purposes are inappropriate.
RACE, COLOUR	APPROPRIATE: Nil (see footnotes 1 and 2) INAPPROPRIATE: Inquiries which would elicit information about race or colour, such as physical characteristics - colour of eyes, hair; height and weight, or photographs.	APPROPRIATE: Nil (see footnotes 1 and 2) INAPPROPRIATE: See under application forms.
RELIGION, CREED	APPROPRIATE: Nil (see footnotes 1 and 2) INAPPROPRIATE: Inquiries about religious affiliation, churches attended, religious holidays, customs observed, willingness to work on a specific religious holiday.	APPROPRIATE: Inquiries about leave of absence required for religious observances. INAPPROPRIATE: See under application forms.

ONTARIO (cont'd)

CATEGORY	QUESTIONS ON APPLICATION FORMS	QUESTIONS AT PERSONAL EMPLOYMENT INTERVIEWS
CITIZENSHIP	APPROPRIATE: "Are you legally entitled to work in Canada?" (see footnotes 1 and 2) INAPPROPRIATE: Inquiries about and categories such as Canadian citizen/landed immigrant; permanent resident; native born/naturalized; date citizenship was received; citizenship of parents/spouse.	APPROPRIATE: See under application forms, except that inquiries may be about Canadian Citizenship if: • Canadian citizenship is required by law for the particular job; • Canadian citizenship or permanent resident status is required to foster participation in cultural, educational, trade union or athletic activities by Canadians or landed immigrants; or • the position is a chief or senior executive position and the organization requires the holder to be a Canadian citizen or to be domiciled in Canada with the intention to become a Canadian citizen. (see also footnotes 1 and 2). An applicant may be asked to provide proof of eligibility to work in Canada. INAPPROPRIATE: See under application forms, except as noted above.
EDUCATION	APPROPRIATE: Job-related inquiries such as: grade/level completed; degrees/diploma/level obtained; course(s) of study.	APPROPRIATE: Job-related inquiries designed to determine the merits of an applicant's qualifications, including verification of educational background.

ONTARIO (cont'd)

CATEGORY	QUESTIONS ON APPLICATION FORMS	QUESTIONS AT PERSONAL EMPLOYMENT INTERVIEWS
EDUCATION (CONT'D)	INAPPROPRIATE: Inquiries about name and location of elementary school.	INAPPROPRIATE: Inquiries designed to elicit information about any prohibited ground of discrimination.
RECORDS OF OFFENCES (see footnote 3).	APPROPRIATE: Inquiries as to whether an applicant has ever been convicted of a criminal offence for which a pardon has not been granted. Inquiries to determine whether an applicant is bondable if this is a genuine and reasonable qualification for the job. (see footnotes 1 and 2) INAPPROPRIATE: Inquiries as to whether an applicant has ever been convicted for any offences; has ever been arrested or charged with any offence; has ever spent time in jail.	APPROPRIATE: Inquiries about a record of offences including verification of pardon may be made if the nature of the particular job makes the absence of a record of those particular offences a genuine and reasonable qualification for the job. (see also footnotes 1 and 2) INAPPROPRIATE: Inquiries about record of offences which are not job-related.
HANDICAP	APPROPRIATE: Nil (see footnotes 1 and 2) INAPPROPRIATE: Inquiries about; health; handicaps; physical defects; illnesses; mental disorder; impairment or retardation; medical history; learning disability; injuries or Workmen's Compensation claims; medication; membership in Alcoholics Anonymous. Requirements that applicants undergo pre-interview medical examinations.	APPROPRIATE: Inquiries or medical examination which are directly related to an applicant's ability to perform the essential duties of the job. (see also footnotes 1 and 2). INAPPROPRIATE; Medical examinations or inquiries about health which are not directly job-related may constitute evidence of unlawful discrimination. NOTE: Genuine and reasonable inquiries about handicap that are pertinent to legitimate personnel purposes, such as relating to superannuation, pension, disabi

ONTARIO (cont'd)

CATEGORY	QUESTIONS ON APPLICATION FORMS	QUESTIONS AT PERSONAL EMPLOYMENT INTERVIEWS
HANDICAP (CONT'D)		benefit plans may be made after hiring. However, exclusion from such plans may not be used as a reason for denying employment.
REFERENCES AND MEMBERSHIPS IN ORGANIZATIONS	APPROPRIATE: Nil (see footnote 2) INAPPROPRIATE: Inquiries should not be made as to membership in organizations identified by any of the prohibited grounds of discrimination. Applicants should not be required to provide references that would identify his or her religious affiliation.	APPROPRIATE: Nil (see footnote 2) INAPPROPRIATE: Inquiries should not be made which would elicit information about any of the prohibited grounds. (see also footnotes 1, 2 and 3)

1. Special Interest Organizations

A religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is allowed to give preference in employment to persons similarly identified, if the qualification is a reasonable and genuine one because of the nature of the employment. Inquiries about such affiliation may be made at the employment interview stage. For further information, contact the nearest office of the Human Rights Commission.

2. Special Programs

Employers may implement special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged groups to achieve equal opportunity. An employer who wishes assistance in the development of such a program or who wants to know whether a proposed program meets the requirements of the Code may make application to the Commission. The Commission will then review the program and, if

		it meets the requirements of the Code, make a declaration to this effect. For further information, contact the nearest office of the Commission.
3.	Record of Offences	"Record of offences" means a conviction for, (i) an offence under a federal statute (for example, the Criminal Code) for which an unrevoked pardon has been granted under the Criminal Records Act; or (ii) an offence under an Ontario statute (for example, the Highway Traffic Act).

Note: It is the practice of the Human Rights Commission to assist employers in determining their rights and obligations with respect to advertisements, employment application forms, etc. In such cases, the Commission has indicated its approval or disapproval of proposed advertisements and application forms. Employers are invited to contact the nearest office of the Commission.

QUÉBEC

The following table presents the Commission's recommendation concerning the content of questions most frequently asked on forms or in interviews. Generally, the Commission recommends that questionnaires be designed to discover whether or not applicants possess the qualifications required for the job. Questions which do not concern the job itself are to be avoided. The Commission insists that the same questions be asked of men and of women and that the same forms be used for both sexes.

SUBJECT	QUESTIONS COMPLYING WITH THE CHARTER	QUESTIONS TO BE AVOIDED	QUESTIONS THAT MAY BE ASKED AFTER HIRING
Name	Family name and usual given names	Any question which could reveal civil status through the name (e.g. a question about the name of a married woman.) Names of parents	Names of dependents Name of a person to be notified in case of accident or emergency
Sex	None		
Address	Present address and telephone numbers	Place of birth Previous addresses Address of spouse or parents, or any question making it possible to know with whom the applicant is living.	
Civil status		Mr( ), Mrs( ), Ms, Miss( ) Single, married, divorced, widow(er) etc. Occupation of spouse, parents or name of their employers	Relationship or family tie with a person already in the service of the employer Number of dependents and their income bracket (for tax purposes)

QUÉBEC (cont'd)

SUBJECT	QUESTIONS COMPLYING WITH THE CHARTER	QUESTIONS TO BE AVOIDED	QUESTIONS THAT MAY BE ASKED AFTER HIRING
		Questions about the applicant's family (e.g. number of brothers and sisters) Questions about the applicant's intention to marry or to have children	Birth certificate (but not marriage certificate)
Religion		Any question about religious affiliation, the fact of being a priest or a member of a religious order, etc.	Question about any religious holidays that the employee observes and for which he or she requests leave
Characteristics and state of health	Height and weight if they are relevant to the job Physical or mental disabilities which could affect performance on the job Applicant's consent to undergo a medical examination	Previous hospitalization Illnesses other than those which could affect the work to be done Medical treatment previously undergone Date of most recent X-ray Questions about pregnancy	Photograph for identification purposes
Race and color	None	Any question about an applicant's race or color	
Nationality and place of origin	Have you a permit to work in Canada? Questions on previous experience that qualifies the applicant for the job	Extent of work experience in Québec or Canada	Visa number, if a landed immigrant Work permit Proof of Canadian citizenship

QUÉBEC (cont'd)

SUBJECT	QUESTIONS COMPLYING WITH THE CHARTER	QUESTIONS TO BE AVOIDED	QUESTIONS THAT MAY BE ASKED AFTER HIRING
Language	Languages written and spoken, and level of competence (The employer must abide by the requirements of the Charter of the French language)	Mother tongue	Language in which the employee wishes to receive correspondence
Education, training and professional qualifications	Number of years of schooling Schools, colleges, and universities attended Degrees or diplomas, specialization, subjects of theses Scholarships obtained (from a public organization only) Fields of specialization Preferred subjects Extracurricular activities Desire to continue studying Proof of diplomas Certificates of proficiency	School, extracurricular or professional activities with a religious, ethnic, racial or political group Any question about the private life of the applicant Have you ever taken part in union activities? Did you pay for your own education?	

QUÉBEC (cont'd)

SUBJECT	QUESTIONS COMPLYING WITH THE CHARTER	QUESTIONS TO BE AVOIDED	QUESTIONS THAT MAY BE ASKED AFTER HIRING
	Membership in professional association or corporations Driver's licence if a job requirement		
Previous experience	Names and addresses of previous employers References related to the qualifications for the job to be filled Type of work done Time spent with each employer Salary Reason for leaving Motivation for work Any question respecting competence	Any question referring to private life (personal or financial) e.g. Has your salary ever been garnished? Have you ever gone bankrupt?	
Information about work applied for	Social insurance number Previous experience or application to the firm or organization concerned Type of job applied for Date on which applicant will be free to start work	Québec Health Insurance number	Workmen's compensation benefits Disability benefits Pension plan benefits Authorization to deduct union dues

QUÉBEC (cont'd)

SUBJECT	QUESTIONS COMPLYING WITH THE CHARTER	QUESTIONS TO BE AVOIDED	QUESTIONS THAT MAY BE ASKED AFTER HIRING
	Preferences as to place of work Work schedule preferred Availability to travel		
Para-professional and recreational activities	Questions about membership in associations, clubs, organizations, etc., preceded by this note: "Do not declare membership in associations or organizations of a religious racial, ethnic or political character." Service with volunteer organizations (same restriction)	Any question about the private life of the applicant	
Financial situation	Questions must have a direct bearing on the work to be done e.g. Do you have a car? (if the applicant must use one for his work) Can you qualify for a bond? (for work that requires bonding)	Name and address of the applicant's bank Have you any debts? Are you a tenant or property owner?	
Civil or criminal responsibility	Questions concerning civil responsibility related to the job	Have you ever been arrested? Have you ever broken the law?	

QUÉBEC (cont'd)

SUBJECT	QUESTIONS COMPLYING WITH THE CHARTER	QUESTIONS TO BE AVOIDED	QUESTIONS THAT MAY BE ASKED AFTER HIRING
	e.g. In the case of a physician sentenced to pay damages for professional misconduct In the case of a chauffeur sentenced to pay damages because of a traffic accident Questions about criminal responsibility related to the job e.g. Have you ever been convicted of a criminal offence that has a significant relation to the position desired? Give details.		

SASKATCHEWAN

Inquiries before hiring	Lawful	Unlawful
1. Name	Name used if previously employed under different name.	Inquiry into previous name where it has been changed by court order to otherwise. Maiden name.
2. Address	Inquiry into place and length of current and previous addresses in Canada.	Inquiry into foreign addresses which would indicate national origin.
3. Birthplace, nationality, ancestry, place of origin	Request birth certificate <u>after hiring.</u>	a. Request birth certificate or baptismal certificate. b. Any inquiry into place of birth. c. Any inquiry into place of birth of parent, grand-parents or spouse. d. Any other inquiry into national origin.
4. Race or color		Any inquiry which would indicate race, color or complexion.
5. Photographs	May be required <u>after hiring</u> for identification purposes.	Request photograph.
6. Religion-creed		a. Any inquiry to indicate or identify religious denomination or customs b. May not be told this is a Protestant (Catholic or Jewish) organization. c. Request pastor's recommendation or reference.

SASKATCHEWAN (cont'd)

Inquiries before hiring	Lawful	Unlawful
7. Citizenship	May ask if applicant is legally entitled to work in Canada.	a. Whether a Canadian citizen or British subject. b. If native-born or naturalized. c. Date citizenship received. d. Proof of citizenship. e. Inquiries regarding citizenship status of parents or spouse. f. Any inquiry into citizenship status, which would tend to divulge applicant's nationality, ancestry or place of origin.
8. Education	a. Inquiry into what academic, professional or vocational schools attended. b. Inquiry into language skills such as reading and writing of foreign languages.	a. Any inquiry asking specifically the nationality, racial or religious affiliation of a school. b. Inquiry as to what is mother tongue or how foreign language ability was acquired.
9. Relatives	Inquiry <u>after hiring</u> into name and address of person to be notified in case of emergency.	a. Name and address of closest relative. b. Any inquiry about a relative which cannot be asked of an applicant.
10. Organization	Inquiry into organization memberships [with the proviso:] "You may decline to list organizations which would indicate your religion, race, etc.".	a. Request applicant to list all clubs and organizations where membership is held.

SASKATCHEWAN (cont'd)

Inquiries before hiring	Lawful	Unlawful
		b. Specific inquiry into clubs and organizations which would indicate race, creed, religion, color, sex, marital status, age, physical disability, nationality, ancestry or place of origin.
11. Work schedule	a. Inquiry into willingness to work required work schedule. b. Inquiry <u>after hiring</u> about religion to determine when leave-of-absence might be required for the observance of religious holidays.	Any inquiry into willingness to work any particular religious holiday.
12. Military service	Inquiry into Canadian military service.	Inquiry into all military service.
13. Sex		Any inquiry on the application form into the sex of the applicant.
14. Age	Has applicant attained minimum age or exceeded maximum age that applies to employment by law.	Require birth certificate or baptismal record or any other information regarding age of applicant.
15. Marital status	"Are you willing to travel or be transferred to other areas of the province or country?" if job related.	a. Inquiry as to whether applicant is single, married, remarried, engaged, divorced, separated, widowed, living common-law. b. Any inquiry as to applicant's spouse, e.g. "Is spouse subject to transfer?"

SASKATCHEWAN (cont'd)

Inquiries before hiring	Lawful	Unlawful
		c. Inquiry as to number of children or other dependants. d. Inquiry as to child care arrangements. e. Inquiry as to whether application is pregnant, is breast feeding a child, on birth control or has future childbearing plans.
16. Physical disability	In order to conform to Exemption Order SHRC 80/4EO the following questions are recommended: (i) "Do you have a physical disability which will affect your ability to perform any of the functions of the job for which you have applied?" Yes ☐ No ☐ (ii) If the answer to the above is "yes", what functions can you not perform and what accommodations could be made which would allow you to do the work adequately?	Inquiry into all physical disabilities, health problems, or previous injuries (this tends to elicit information with regard to disabilities or conditions which are not necessarily related to job performance).
17. Height and weight		Unless shown to be essential to the performance of the job applied for.

FEDERAL

SUBJECT	NOT ACCEPTABLE	ACCEPTABLE	COMMENTS
1. Name	- maiden name of applicant - inquiry as to previous name, if changed by court order or otherwise	- previous name under which applicant has been educated or employed	
2. Address	- inquiry into foreign address which may indicate national origin	- place and duration of current and previous address in Canada	
3. Age	- require birth certificate or baptismal record or any other information regarding age of applicant	- has applicant attained minimum age or exceeded maximum age that applies to employment by law	- verification of age may be obtained after selection is made
4. Sex	- any inquiry as to sex on the application form - different or coded application forms for males or females		- correspondence to applicants may be addressed to their homes without the prefixes "Mr., Mrs., Miss, Ms.", e.g. "Dear Mary Smith", "Dear John Doe"
5. Marital status	- inquiry as to whether applicant is single, married, engaged, divorced, separated, widowed, living common law - any inquiry as to applicant's spouse, e.g., "Is spouse subject to transfer?"	- "Are you willing to travel or be transferred to other areas of the province or country?" if job related	- information required for tax or insurance purposes may be obtained after selection decision is made

SUBJECT	NOT ACCEPTABLE	ACCEPTABLE	COMMENTS
	- inquiry as to number of children or other dependents - inquiry as to child care arrangements - inquiry as to whether applicant is pregnant, is breast feeding a child, on birth control or has future childbearing plans		
6. National or Ethnic Origin	- any inquiry as to birthplace - inquiry into nationality of parents, grandparents, relatives or spouse - any inquiry as to ethnic or national origin, e.g. birth certificate, mother tongue - if native born or naturalized - date citizenship received - proof of citizenship	- "Are you legally entitled to work in Canada?" If further clarification is requested you may state that those so entitled are Canadian citizens, landed immigrants or holders of a valid work permit.	- an employer may ask for documentary proof of eligibility to work in Canada after selection decision is made
7. Military	- inquiry into all military service	- inquiry into Canadian military service	- inquiry into all military service permissible if military experience directly related to job applied for

FEDERAL (cont'd)

SUBJECT	NOT ACCEPTABLE	ACCEPTABLE	COMMENTS
8. Languages	- mother tongue - where language skills were obtained	- inquiry into which languages applicant speaks, reads, or writes, only if job related	testing or scoring an applicant in English or French language proficiency is not approved unless English or French language skill is a requirement of the work to be performed
9. Race or Color	- any inquiry which would indicate race, color, complexion including color of eyes, hair or skin		
10. Photograph	- request for photograph or taking of photograph		- may be required for identification purposes after selection decision is made
11. Religion	- any inquiry as to religious affiliation - any inquiry as to willingness or availability to work on a specific religious holiday - church attended, religious holidays, customs observed or religious dress - request reference or recommendations from pastor, priest, minister, rabbi or other religious leader	- inquiry as to willingness to work a specified work schedule	- it is the duty of the employer to accommodate the religious observances of the applicant, if it is reasonably possible to do so - inquiry after hiring about religion to determine when leave of absence might be required for religious observances

FEDERAL (cont'd)

SUBJECT	NOT ACCEPTABLE	ACCEPTABLE	COMMENTS
12. Physical Handicap	- inquiry into all physical handicaps, limitations or health problems (this would tend to elicit handicaps or conditions which are not necessarily related to job performance)	- inquiry as to whether applicant has any physical handicaps or health problems affecting the job applied for - inquiry as to any physical handicaps or limitations that the applicant wishes to be taken into consideration during the selection and interview process, or in determining job placement	- a physical handicap is only relevant to the job if: (a) the handicap would threaten the safety of co-workers, clients or the public; (b) the handicap would prevent the appliant from performing essential job duties satisfactorily even if a reasonable effort were made to accommodate the handicap
13. Medical Information			- a medical examination will necessarily reveal prohibited information about an applicant such as his or her age, race, or sex. Employers should conduct medical examinations only when an employee's physical condition is relevant to the job duties and then only after the selection decision is made. Employers may indicate on application forms that job offer is conditional on applicant passing a medical examination
14. Organisations	- request that applicant list all clubs or organizations he or she belongs to	- proviso that applicant may decline to list clubs or organizations which may indicate a prohibited ground of discrimination	- request should only be made if membership in organizations is necessary to determine job qualifications

FEDERAL (cont'd)

SUBJECT	NOT ACCEPTABLE	ACCEPTABLE	COMMENTS
15. Height & Weight			- height and weight requirements may be discriminatory if they screen out disproportionate numbers of minority group individuals or women and cannot be shown to be related to job performance
16. Relatives	- name and address of next of kin and his or her relationship, to be notified in case of emergency	- name and address of person to be notified of emergency	- this information should be obtained when the new employee is being documented
17. References	- any inquiry made to person who is a reference that would not be allowable if made directly to the applicant		
18. Criminal Conviction	- inquiry into whether applicant has ever been convicted of a crime	- inquiry into whether applicant has been convicted of an offense for which no pardon has been granted	- the Canadian Human Rights Act prohibits discrimination based on a criminal conviction for which a pardon has been granted. The Commission discourages inquiries into unpardoned criminal convictions unless the particular conviction is relevant to job qualification
19. Optional	- prohibited inquiries marked "optional" will be considered contrary to the Act		

Appendix II

Sample Application for Employment

Position being applied for	Date available to begin work

PERSONAL DATA

Last name	Given name(s)	Social Insurance Number
		| | | - | | | - | | |

Address	Street	Apt. No.	Home Telephone Number
City	Province	Postal Code	Business Telephone No.

Please indicate how you want to be addressed in any correspondence _ As above _ Mr _ Mrs _ Miss _ Ms

Are you legally eligible to work in Canada? _ Yes _ No
Are you between 18 and 65 years of age? _ Yes _ No

Are you willing to relocate in Ontario? _ Yes _ No	Preferred location	Do you have a valid driver's licence _ Yes _ No	Class

To determine your qualification for employment, please provide below and on the reverse, information related to your academic and other achievements including voluntary work, as well as employment history. Additional information may be attached on a separate sheet.

EDUCATION

SECONDARY SCHOOL		BUSINESS, TRADE OR TECHNICAL SCHOOL	
Highest grade or level completed		Name of course	Length of course

Type of certificate or diploma received	Licence, certificate or diploma awarded? _ Yes _ No

COMMUNITY COLLEGE		UNIVERSITY		
Name of Program	Length of Program	Length of course	Degree awarded _ Yes _ No	_ Pass _ Honours

Diploma received? _ Yes _ No | Major subject

Other courses, workshop, seminars	Licences, Certificates, Degrees

Work related skills

Appendix II (continued)

Describe any of your work related skills, experience, or training that relate to the position being applied for.

EMPLOYMENT

Name and Address of present/ last employer.	Present/Last Job title	
	Period of employment From To	Present/Last salary
	Name of Supervisor	Telephone
Type of Business	Reason for leaving	
Duties/Responsibilities		

Name and Address of previous employer.	Previous job title	
	Period of employment From To	Final salary
	Name of Supervisor	Telephone
Type of Business	Reason for leaving	
Duties/Responsibilities		

Name and Address of previous employer.	Previous job title	
	Period of employment From To	Final salary
	Name of Supervisor	Telephone
Type of Business	Reason for leaving	
Duties/Responsibilities		

For employment reference, may we approach:

Your present/last employer? _ Yes _ No
Your former employer(s)? _ Yes _ No

List references if different than above on a separate sheet.

Activities (civic, athletic, etc.)

Appendix II (continued)

I hereby declare that the foregoing information is true and complete to my knowledge. I understand that a false statement may disqualify me from employment, or cause my dismissal.	Have you attached an additional sheet? _ Yes _ No Signature Date

Source: Ontario Human Rights Commission